

WSR 16-14-008
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed June 23, 2016, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-014.

Title of Rule and Other Identifying Information: Chapter 182-516 WAC, Trusts, annuities, and life estates—Effects on medical program.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 9, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 10, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 9, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 5, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this chapter to align it with federal law, improve clarity, and make housekeeping changes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Section 1917 of the Social Security Act (42 U.S.C. 1396p).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1343.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

June 23, 2016
Wendy Barcus
Rules Coordinator

Chapter 182-516 WAC

TRUSTS, ANNUITIES, ((AND)) LIFE ESTATES, AND PROMISSORY NOTES—EFFECT ON MEDICAL PROGRAMS

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0001 Definitions. "Acquire" means, in the context of trusts, to gain title to, or to gain ownership interest in an asset in a trust. Receiving payment or benefit from an asset in a trust is not acquiring the asset.

"Annuitant" means a person or entity that receives the ((income)) stream of payments from an annuity.

"Annuity" means a policy, certificate, or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time. ((The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable. The party guaranteeing payment can be an:

(1) Individual; or

(2) Insurer or similar body licensed and approved to do business in the jurisdiction in which the annuity is established.

"Beneficiary" means an individual(s) designated in the trust who benefits from the trust. The beneficiary can also be called the grantee. The beneficiary and the grantor may be the same person.

"Designated for medical expenses" means the trustee may use the trust to pay the medical expenses of the beneficiary. The amount of the trust that is designated for medical expenses is considered an available resource to the beneficiary. Payments are a third party resource.

"Disbursement" or **"distribution"** means any payment from the principal or proceeds of a trust, annuity, or life estate to the beneficiary or to someone on their behalf.

"Discretion of the trustee" means the trustee may decide what portion (up to the entire amount) of the principal of the trust will be made available to the beneficiary.

"Exculpatory clause" means there is some language in the trust that legally limits the authority of the trustee to distribute funds from a trust if the distribution would jeopardize eligibility for government programs including medicaid.

"For the sole benefit of" means that for a transfer to a spouse, blind or disabled child, or disabled individual, the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary.

"Grantor" means an individual who uses his assets or funds to create a trust. The grantor may also be the beneficiary.

"Income beneficiary" means the person receiving the payments may only get the proceeds of the trust. The principal is not available for disbursements. If this term is used, the principal of the trust is an unavailable resource.

"Irrevocable" means the legal instrument cannot be changed or terminated in any way by anyone.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Principal" means the assets that make up the entity. The principal includes income earned on the principal that has not been distributed. The principal is also called the corpus.

"Proceeds" means the income earned on the principal. It is usually interest, dividends, or rent. When the proceeds are not distributed, they become part of the principal.

"Pooled trust" means a trust meeting all of the following conditions:

(1) It contains funds of more than one disabled individual, combined for investment and management purposes;

(2) It is for the sole benefit of disabled individuals (as determined by SSA criteria);

(3) It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;

(4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and

(5) It contains a provision that upon the death of the individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of medicaid paid on behalf of that individual.

"Revocable" means the legal instrument can be changed or terminated by the grantor, or by petitioning the court. A legal instrument that is called irrevocable, but that can be terminated if some action is taken, is revocable for the purposes of this section.

"Sole benefit trust" means an irrevocable trust established for the sole benefit of a spouse, blind or disabled child, or disabled individual. In a sole benefit trust no one but the individual named in the trust receives benefit from the trust in any way either at the time the trust is established or at any time during the life of the primary beneficiary. A sole benefit trust may allow for reasonable costs to trustees for management of the trust and reasonable costs for investment of trust funds.

"Special needs trust" means an irrevocable trust meeting all of the following conditions:

(1) It is for the sole benefit of a disabled individual (as determined by SSA criteria) under sixty-five years old;

(2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and

(3) It contains a provision that upon the death of the individual, the state will receive the amounts remaining in the trust up to the total amount of medicaid paid on behalf of the individual.

"Testamentary trust" means a trust created by a will from the estate of a deceased person. The trust is paid out according to the will.

"Trust" means property (such as a home, cash, stocks, or other assets) is transferred to a trustee for the benefit of the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annuities, refer to WAC 388-561-0200.

"Trustee" means an individual, bank, insurance company or any other entity that manages and administers the trust for the beneficiary.

"Undue hardship" means the client would be unable to meet shelter, food, clothing, and health care needs if the department applied the transfer of assets penalty.)

"Beneficiary" means, in the context of a trust, a person or entity that is entitled to benefit from a trust.

"Grantor" means the person or entity who owned the asset immediately before establishing a trust with that asset.

"Immediate" means, in the context of annuities, an annuity that is fully funded at purchase with no accumulation or deferral to allow accumulation.

"Income" means, in the context of earnings or gains of a trust, the proceeds that a trust principal generates over a period. Any income not disbursed in one period is principal the next period.

"Irrevocable":

(a) For a trust, "irrevocable" means the grantor or someone acting on behalf of the grantor cannot reacquire any portion of the assets in the trust for the benefit of the grantor or unilaterally change the terms of the trust; and the beneficiary or someone acting on behalf of the beneficiary cannot acquire any portion of the assets in the trust for the benefit of the beneficiary or unilaterally change the terms of the trust. A legal instrument that is called irrevocable, but permits acquisition or reacquisition of any portion of the assets if some action is taken by or on behalf of the grantor or the beneficiary, is revocable for the purposes of this chapter.

(b) A trust or annuity that is not irrevocable is revocable.

(c) A trust is still irrevocable if it meets the definition under (a) of this definition, but allows modifications to the trust to con-form with changes in trust law, which occur after the establishment of the trust.

(d) For an annuity, "irrevocable" means the contract cannot be canceled or the terms of the contract cannot be changed.

"Principal" means the assets that make up the trust, promissory note, or loan.

"Revocable":

(a) "Revocable" means the grantor, beneficiary, or someone acting on behalf of either the grantor or beneficiary can:

(i) Change the legal instrument, except for changes to conform with changes in trust law after the trust is established;

(ii) Terminate the legal instrument; or

(iii) Acquire or reacquire any portion of the assets controlled by the legal instrument.

(b) For the purposes of this chapter, if a legal instrument is called revocable but it is someone other than the grantor, beneficiary, or someone acting on behalf of either the grantor or beneficiary that has any of the powers under (a) of this definition, the legal instrument is irrevocable.

(c) A legal instrument that is not revocable is irrevocable.

"Self-settled trust" means any trust established with assets that were originally owned by the beneficiary, or would have been owned by the beneficiary if they had not been diverted into the trust by the beneficiary, the court, or someone acting on the beneficiary's behalf. Depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"Sole benefit" of a beneficiary means a trust benefits no one but that beneficiary, whether at the time the trust is established or at any time during the lifetime of the beneficiary.

"Third-party trust" means a trust established with assets originally owned by someone other than the beneficiary. However, depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"To or for the benefit of" means that a payment or benefit of any sort from a trust is transferred to the beneficiary, another person, or entity such that the beneficiary derives some benefit from the transfer.

"Trust" means:

(a) Any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or another beneficiary; or

(b) Any legal instrument, device, or arrangement similar to a trust in which:

(i) A grantor transfers an asset to another; and

(ii) The grantor transfers the asset intending that it be held, managed, or administered for the benefit of the grantor or another beneficiary.

"Trustee" means a person or entity that manages and administers a trust for the beneficiary.

"Uncompensated asset transfer" means the entirety of the fair market value of the asset transferred was uncompensated, regardless of any consideration received in return for the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0100 Trust((s)) index. ((1) The department determines how trusts affect eligibility for medical programs:

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms

of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:

(i) An ~~unavailable~~ resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An ~~available~~ resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC 388-513-1363, 388-513-1364 or 388-513-1365.

(c) If a revocable trust doesn't meet the description under subsection (3)(a):

(i) The full amount of the trust is an ~~available~~ resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an ~~available~~ resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

- (iii) ~~Restrictions on when or whether distributions may be made from the trust; or~~
- (iv) ~~Restrictions on the use of distributions from the trust.~~
- (d) ~~For a revocable trust established as described under subsection (4)(a) of this section:~~
 - (i) ~~The full amount of the trust is an available resource of the client;~~
 - (ii) ~~Payments from the trust to or for the benefit of the client are income of the client; and~~
 - (iii) ~~Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.~~
 - (e) ~~For an irrevocable trust established as described under subsection (4)(a) of this section:~~
 - (i) ~~Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:~~
 - (A) ~~Income to the client when payment is to or for the client's benefit; or~~
 - (B) ~~The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;~~
 - (ii) ~~A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:~~
 - (A) ~~The trust is established; or~~
 - (B) ~~The client is prevented from receiving benefit, if this is after the trust is established.~~
 - (iii) ~~The value of the trust includes any payments made from the trust after the effective date of the transfer.~~
 - (5) ~~For trusts established on or after August 1, 2003:~~
 - (a) ~~The department considers a trust as if it were established by the client when:~~
 - (i) ~~The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;~~
 - (ii) ~~The trust is not established by will; and~~
 - (iii) ~~The trust was established by:~~
 - (A) ~~The client or the client's spouse;~~
 - (B) ~~A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or~~
 - (C) ~~A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.~~
 - (b) ~~Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.~~
 - (e) ~~The department does not consider:~~
 - (i) ~~The purpose for establishing a trust;~~
 - (ii) ~~Whether the trustees have, or exercise, any discretion under the terms of the trust;~~
 - (iii) ~~Restrictions on when or whether distributions may be made from the trust; or~~
 - (iv) ~~Restrictions on the use of the distributions from the trust.~~

- (d) ~~For a revocable trust established as described under subsection (5)(a) of this section:~~
 - (i) ~~The full amount of the trust is an available resource of the client;~~
 - (ii) ~~Payments from the trust to or for the benefit of the client are income of the client; and~~
 - (iii) ~~Any payments from the trust, other than payments described under subsection (5)(d)(ii), are considered a transfer of client assets.~~
 - (e) ~~For an irrevocable trust established as described under subsection (5)(a) of this section:~~
 - (i) ~~Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:~~
 - (A) ~~Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or~~
 - (B) ~~The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;~~
 - (ii) ~~A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:~~
 - (A) ~~The trust is established; or~~
 - (B) ~~The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.~~
 - (iii) ~~The value of the trust includes any payments made from the trust after the effective date of the transfer.~~
 - (6) ~~Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:~~
 - (a) ~~A person sixty four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-475-0050) and the trust:~~
 - (i) ~~Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and~~
 - (ii) ~~Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or~~
 - (b) ~~A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-475-0050), and the trust meets the following criteria:~~
 - (i) ~~It is irrevocable;~~
 - (ii) ~~It is established and managed by a nonprofit association;~~
 - (iii) ~~A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;~~
 - (iv) ~~Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;~~
 - (v) ~~Accounts in the trust are established by:~~
 - (A) ~~The individual;~~
 - (B) ~~The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;~~
 - (C) ~~The individual's parent, grandparent, legal guardian;~~

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(7) Trusts established on or after August 1, 2003 are not considered available resources if they contain the assets of either:

(a) A person sixty four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-475-0050) and the trust;

(i) Is irrevocable;

(ii) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-475-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsection (6)(a) and (7)(a) continue to be considered an unavailable resource even after the individual becomes age sixty five. However, additional

transfers made to the trust after the individual reaches age sixty five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) if the trust is established for the benefit of a disabled individual under age sixty five as described in WAC 388-513-1363 and 388-513-1364 and the transfer is made to the trust before the individual reaches age sixty five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6), the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.) The medicaid agency or its designee applies the following rules to determine how trusts affect eligibility for medicaid:

(1) WAC 182-516-0105 General rules that apply to all trusts.

(2) WAC 182-516-0110 Self-settled trusts overview.

(3) WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993.

(4) WAC 182-516-0120 Irrevocable self-settled trusts for a disabled person under age sixty-five established on or after August 11, 1993.

(5) WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled person established on or after August 11, 1993.

(6) WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993.

(7) WAC 182-516-0135 Self-settled trusts established before August 11, 1993.

(8) WAC 182-516-0140 Third-party trusts.

(9) WAC 182-516-0145 Trusts containing both assets of the beneficiary and third-party assets.

NEW SECTION

WAC 182-516-0105 General rules that apply to all trusts. (1) Regardless of treatment under this chapter, all trusts remain subject to Title 182 WAC, which include income and resource rules under chapter 182-512 WAC and asset transfer rules under WAC 182-513-1363, unless specified otherwise.

(2) The medicaid agency or its designee treats the trust or a distribution from the trust as a third-party resource under WAC 182-501-0200 if:

(a) The agency or its designee determines the trust is not an available resource or determines the distributions from a trust are not income; and

(b) The terms of the trust or how the trust is being administered meet the third-party resource rules under WAC 182-501-0200.

(3) The agency or its designee applies the rules under WAC 182-516-0100 to both the language of the trust and how the trust is being administered.

(4) Assets in a trust are available resources to the beneficiary if the beneficiary:

(a) Is a trustee; or

(b) Can direct the use of the trust principal or income, or direct the trustee's use of trust principal or income, for that beneficiary's support and maintenance under the terms of the trust.

(5) Distributions from a trust to the beneficiary are unearned income to the beneficiary in the month they are received or should have been received under the trust's terms.

(6) For asset transfers dates for trusts, the transfer date of an asset under WAC 182-513-1363 is the latest of:

(a) The date the trust was established;

(b) The date the asset being evaluated was transferred into the trust; or

(c) The date access to the asset was foreclosed by any action, inaction, or language in the trust that prevents the beneficiary from accessing the asset.

(7) A person who is denied or terminated from medicaid due to the application of any rules under WAC 182-516-0100 may apply for a hardship waiver under WAC 182-513-1367.

NEW SECTION

WAC 182-516-0110 Self-settled trusts overview.

(1)(a) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established.

(b) For specific rules regarding this, see WAC 182-516-0130.

(2) To determine whether the assets of the self-settled trust should be counted as income, a resource, or an asset transfer, the medicaid agency or its designee applies the following rules based on when the trust was established:

(a) For revocable self-settled trusts, see WAC 182-516-0115.

(b) For irrevocable self-settled trusts for a disabled person under age sixty-five established on or after August 11, 1993, see WAC 182-516-0120.

(c) For irrevocable pooled self-settled trusts for a disabled person established on or after August 11, 1993, see WAC 182-516-0125.

(d) For all other irrevocable self-settled trusts:

(i) Established on or after August 11, 1993, see WAC 182-516-0130.

(ii) Established before August 11, 1993, see WAC 182-516-0135.

NEW SECTION

WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993.

(1) This section

applies to revocable, as defined under WAC 182-516-0001, trusts that are self-settled and established after August 11, 1993.

(2) This section does not apply to assets in a revocable trust established before August 11, 1993, under WAC 182-516-0135.

(3) A revocable trust is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(4)(a) The medicaid agency or its designee treats assets in a revocable self-settled trust as if the grantor owns the assets, subject to resource exclusions under chapter 182-512 WAC.

(b) Assets in a revocable self-settled trust not excluded under chapter 182-512 WAC are available resources to the grantor.

(5) Payments from assets in the trust under this section to or for the benefit of the beneficiary are unearned income of the beneficiary.

(6) Any payments from the revocable trust, other than payments under subsection (5) of this section, are uncompensated asset transfers.

NEW SECTION

WAC 182-516-0120 Irrevocable self-settled trusts for a disabled person under age sixty-five established on or after August 11, 1993.

(1) This section governs how the agency or its designee treats self-settled trusts, for a disabled person under age sixty-five established under 42 U.S.C. 1396p (d)(4)(a) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is under age sixty-five and disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) The trust was established for the sole benefit of that beneficiary;

(d) The trust was established by the beneficiary's parent, grandparent, legal guardian, or by a court; and

(e) The trust says that the states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust up to the amount of medicaid funds spent for the beneficiary.

(i) For trusts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(ii) For trusts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or its designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

NEW SECTION

WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled person established on or after August 11, 1993. (1) This section governs how the agency or its designee treats pooled self-settled trusts, for a disabled person established under 42 U.S.C. 1396p (d)(4)(c) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A pooled self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) An account in the trust was established for the sole benefit of that beneficiary;

(d) An account in the trust was established by that beneficiary, the beneficiary's parent, grandparent, legal guardian, or by a court;

(e) The trust was established by and is managed by a nonprofit association;

(f) A separate account is maintained for each beneficiary of the trust, but, for the purposes of the investment and management of funds, the trust pools these accounts; and

(g) The trust says that:

(i) The funds will remain in the trust to benefit other disabled beneficiaries; or

(ii) The states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust account for that beneficiary up to the amount of medicaid funds spent for the beneficiary.

(A) For trust accounts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(B) For trust accounts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or its designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

NEW SECTION

WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993. (1) This section governs irrevocable self-settled trusts established on or after August 11, 1993, that do not meet the rules under either WAC 182-516-0120 or 182-516-0125.

(2) A trust established on or after August 1, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse, or would have been owned by the beneficiary or the beneficiary's spouse unless diverted by the beneficiary, the beneficiary's spouse, the court, or someone acting on behalf of the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(3) A trust established from August 11, 1993, to July 31, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary, or would have been owned by the beneficiary unless diverted by the beneficiary, the court, or someone acting on behalf of the beneficiary;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary.

(4) This section applies only to the assets contributed to a trust:

(a) Under subsection (2) of this section, by either the beneficiary or that beneficiary's spouse; or

(b) Under subsection (3) of this section, by the beneficiary.

(5) The medicaid agency or its designee applies the rules of this section without regard to:

(a) The purpose for establishing a trust;

(b) Whether the trustees have or may exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; and

(d) Restrictions on the use of distributions from the trust.

(6) Treatment of payments or benefits from trusts established under this section.

(a) If there are any circumstances under which payment or benefit from the trust could be made to or for the benefit of the beneficiary, that part of the trust or income of that trust is an available resource to the beneficiary, and the payment or benefit from that part:

(i) Is unearned income when payment or benefit is to or for the benefit of the beneficiary; and

(ii) Is an uncompensated asset transfer, if payment or benefit is for any other purpose.

(b) If there are no circumstances under which any payment or any benefit from the trust could be made to or for the benefit of the beneficiary, the part of the trust or income of that trust, from which payment or benefit cannot be made, is an uncompensated asset transfer.

NEW SECTION

WAC 182-516-0135 Self-settled trusts established before August 11, 1993. (1) A revocable or irrevocable self-settled trust established before August 11, 1993, under this section is one:

(a) Established other than by will by a beneficiary or that beneficiary's spouse;

(b) Under which that beneficiary may be the beneficiary of all or part of the payments from the trust; and

(c) Under which the distribution of those payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the beneficiary.

(2) For trusts established under subsection (1) of this section, the maximum value the trustee may distribute, under any circumstances, to the beneficiary is unearned income.

(3) If a trust does not meet subsection (1)(c) of this section:

(a) The trust is an available resource to the extent that trust assets can be used for the beneficiary; and

(b) Any asset that cannot be used for the beneficiary is an uncompensated asset transfer.

(4) This section does not apply to any trust or initial trust decree established before April 7, 1986, for the sole benefit of an intellectually disabled person who resides in an intermediate care facility for the intellectually disabled.

NEW SECTION

WAC 182-516-0140 Third-party trusts. (1) This section governs third-party trust as defined under WAC 182-516-0001.

(2)(a) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established.

(b) For specific rules regarding this, see WAC 182-516-0130.

(3) A testamentary trust is a third-party trust created by a will where the trust is in the will and the estate is the grantor.

(4) There is no requirement for a state to be named as a remainder beneficiary in third-party trusts.

(5) If the beneficiary has the power to acquire the assets from the third-party trust, the trust is an available resource.

(6) If the beneficiary has no power to access or control trust assets or distributions, as described under WAC 182-516-0105(4), a third-party trust is not an available resource.

NEW SECTION

WAC 182-516-0145 Irrevocable trusts containing both assets of the beneficiary and third-party assets. (1) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the medicaid agency or its designee treats the assets of the beneficiary under the self-settled trust rule as of the date of the trust's establishment:

(a) After August 11, 1993:

(i) For irrevocable self-settled trusts for a disabled person under age sixty-five, see WAC 182-516-0120;

(ii) For irrevocable pooled self-settled trusts for a disabled person, see WAC 182-516-0130; and

(iii) For all other trusts, see WAC 182-516-0130.

(b) Before August 11, 1993, see WAC 182-516-0135.

(2) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the agency or its designee treats third-party assets under the third-party trust rules under WAC 182-516-0140.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0200 Annuities established prior to April 1, 2009. (1) ((The department determines how annuities affect eligibility for medical programs.

((2))) A revocable annuity is ((considered)) an available resource.

((3))) (2) An irrevocable annuity established prior to May 1, 2001, is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

((4))) (3) The income from an irrevocable annuity((, meeting)) that meets the requirements of this section((, is considered in)) is income for determining eligibility and the amount of participation in the total cost of care. The annuity itself is not ((considered)) a resource ((or income)).

((5))) (4) Subject to subsection (5) of this section, an annuity established on or after May 1, 2001, and before April 1, 2009 ((will be considered)), is an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the ((department)) state of Washington as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

((6))) (5) If an irrevocable annuity ((established on or after May 1, 2001 and before April 1, 2009 that is not scheduled to be paid out in equal monthly amounts, can still be considered)) is an available resource under subsection (4) of

this section because it does not pay out in equal monthly amounts, it is an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the ((department)) medicaid agency or its designee calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

((7))) (6) An irrevocable annuity((, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

(8) An irrevocable annuity, established on or after May 1, 2001 and before April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ineligible in the month of application.

(9) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (e), of the client;

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (e), of the client.

((10))) is unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client.

(7) An annuity is not ((considered)) an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the ((cash surrender)) value of the annuity is ((considered)) an available resource and counts toward the maximum community spouse resource allowance.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0201 Annuities established on or after April 1, 2009. ((1)) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of medicaid must disclose to the state any interest the applicant or spouse has in an annuity.

((2)) A revocable annuity is considered an available resource.

((3)) The following annuities are not considered an available resource or a transfer of a resource as described in WAC 388-513-1363, if the annuity meets the requirements described in (4)(d), (e) and (f) of this subsection:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;

(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;

(c) Purchased with proceeds from a simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or

(d) Purchased with proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(4) The purchase of an annuity not described in subsection (3) established on or after April 1, 2009, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and

(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant; or

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the purchaser of the annuity is the annuitant and is an applicant for or recipient of medicaid, or a community spouse of an applicant for or recipient of long term care or waiver services;

(i) In the first position for the total amount of medical assistance paid for the individual, including both long term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (e) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any pay-

~~ment from the annuity if a community spouse is the annuitant;~~

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (e). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position.

(g) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full payout is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled payout into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (e), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources

derived from an annuity other than an annuity described in subsections (3), (4), and (5)) (1) The medicaid agency or its designee determines how an annuity, purchased by or on behalf of an annuitant and established on or after April 1, 2009, affects eligibility for medicaid.

(2) General information.

(a) Applicants for and recipients of noninstitutional medicaid must disclose to the agency or its designee any interest that person, or the financially responsible members of that person's assistance unit, has in an annuity.

(b) Applicants for and recipients of institutional or home and community-based (HCB) waiver services must disclose to the agency or its designee any interest that person, or that person's community spouse, has in an annuity.

(c) Subject to (d) of this subsection, this section applies when the annuitant is:

(i) The applicant for or recipient of medicaid;

(ii) That person's spouse, if that spouse is financially responsible for that person; or

(iii) That person's community spouse.

(d) If this section does not apply because of (c) of this subsection, but the applicant for or recipient of institutional or HCB waiver services, or that person's community spouse, is the owner of the annuity, then the purchase of the annuity is evaluated as an asset transfer under WAC 182-513-1363.

(e) For the definition of "disabled," see WAC 182-512-0050 (1)(b) and (c).

(f) Actuarial life expectancy in this section is rounded up to the nearest whole year.

(3) Annuities as resources.

(a) Subject to (b) of this subsection, a revocable annuity is an available resource.

(b) The following annuities are not available resources, even if revocable:

(i) An annuity described under 26 U.S.C. Sec. 408 (b) or (q); or

(ii) An annuity purchased with proceeds from:

(A) An account or trust described under 26 U.S.C. Sec. 408 (a), (c), or (p);

(B) A simplified employee pension (within the meaning of 26 U.S.C. Sec. 408(k)); or

(C) A Roth IRA described under 26 U.S.C. Sec. 408A.

(c) An annuity not described under (b) of this subsection is an available resource unless the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal monthly amounts with no deferral and no balloon payments, over a term:

(A) Of at least five years, if the actuarial life expectancy of the annuitant is at least five years; or

(B) Not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(d) If an annuity fails either the immediate requirement under (c)(ii) of this subsection or the monthly payout requirement under (c)(iii) of this subsection, the annuity is not a resource if:

(i) The annuity is fully paid out within the actuarial life expectancy of the annuitant; and

(ii) The annuitant:

(A) Changes the scheduled payout to equal monthly payments; or

(B) Asks the agency or its designee to calculate and budget the periodic payments as equal monthly payments beginning the month of eligibility. Periodic payments made before the month of eligibility are not included in the calculation.

(iii) Nothing under (d) of this subsection affects the deferral or balloon payment requirements under (c)(iii) of this subsection, or the payment term requirements under (c)(iii)(A) or (B) of this subsection.

(4) Annuities as income.

(a) If an annuity is not a resource under subsection (3) of this section, the payments from the annuity are unearned income to the annuitant.

(b) If an annuity is a resource under subsection (3) of this section, the payments from the annuity are not income to the annuitant.

(5) An annuity as a transfer of assets.

(a) The purchase of an annuity is an uncompensated asset transfer, unless the annuity designates the state of Washington as remainder beneficiary under subsection (6) of this section.

(b) The purchase of an annuity by the applicant for or the recipient of institutional or HCB waiver services is an uncompensated asset transfer, unless the annuity is an annuity under subsection (3)(b)(i) or (ii) of this section, or:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term not greater than the actuarial life expectancy of that applicant or recipient.

(6) Beneficiary designation requirements.

(a) Subject to (b) of this subsection, to satisfy subsection (5)(a) of this section, when the institutional or HCB waiver services client or that client's community spouse is the annuitant, the annuity must:

(i) Name the states as the remainder beneficiary, for at least the total amount of services covered under medicaid, paid on behalf of the applicant for or recipient of institutional or HCB waiver services; and

(ii) The remainder beneficiary must be listed in the annuity in the:

(A) First position;

(B) Second position, after the community spouse or any minor or disabled child; or

(C) First position, if the community spouse, minor or disabled child, or representative for a child named as beneficiary in the first position under (a)(ii) of this subsection, transfers the right to receive payments from the annuity for less than fair market value.

(b) When the community spouse is the annuitant, the community spouse cannot be named as remainder beneficiary under (a)(ii)(A) of this subsection.

(c) If a change of circumstance requires a change in beneficiary designation under (a) of this subsection, the agency

or its designee reevaluates the annuity's beneficiary designation.

(7) Actuarial life expectancy is determined by tables that are published by the office of the chief actuary of the Social Security Administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0300 Life estates. ((1) The department determines how life estates affect eligibility for medical programs.

(2) A life estate is an excluded resource when either of the following conditions apply:

(a) It is property other than the home, which is essential to self support or part of an approved plan for self support; or

(b) It cannot be sold due to the refusal of joint life estate owner(s) to sell.

(3) Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(4) Only the client's proportionate interest in the life estate is considered when there is more than one owner of the life estate.

(5) A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer of resource penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(6) When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:

(a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other non-excluded resources; or

(b) For institutional medical, a period of ineligibility will be established according to WAC 388-513-1363, 388-513-1364 and 388-513-1365.) (1) "Life estate" means an ownership interest in real property only during the lifetime of a specified person.

(2) Subject to subsection (3) of this section, a life estate is an available resource, unless it is either excluded or unavailable under chapter 182-512 WAC.

(3) For someone applying for or receiving long-term services and supports, a life estate interest is subject to the home equity limits under:

(a) WAC 182-513-1350 for institutional and home and community-based (HCB) waiver programs; and

(b) WAC 182-513-1215 for community first choice.

(4) For applicants for or recipients of institutional or HCB waiver services:

(a) If the remainder interest was transferred for less than fair market value, the medicaid agency or its designee will evaluate the transaction as an asset transfer under WAC 182-513-1363. "Remainder interest" is the fair market value of the property at the time the person transferred it and retained a life estate, minus the value of the life estate at the time of that transfer.

(b) If a person purchased a life estate but has not lived in the property for at least one year after the purchase, the pur-

chase price of the life estate is an uncompensated asset transfer under WAC 182-513-1363.

(c) If a person purchased a life estate and has lived in the property for more than one year, it is not an uncompensated transfer, unless the purchase price for the life estate exceeded the value of the life estate. Any amount paid for a life estate in excess of the value of the life estate is an uncompensated transfer under WAC 182-513-1363.

(5) To calculate the value of a life estate:

(a) Identify the person whose life determines the length of the life estate;

(b) Identify whether uncompensated value or home equity is being calculated;

(i) If calculating uncompensated value under subsection (4)(a) or (c) of this section, identify that person's age on the person's last birthday before the transfer; or

(ii) If determining whether home equity requirements are met under subsection (3) of this section, identify that person's age on the person's most recent birthday; and

(c) Multiply the property's fair market value by the life estate factor corresponding to that person's age in the Life Estate and Remainder Interest Tables maintained by the Social Security Administration.

(6) To calculate the remainder interest, subtract the value in subsection (5) of this section from the property's fair market value at the time of the transaction that created the life estate.

NEW SECTION

WAC 182-516-0400 Promissory notes and loans. (1)

General.

(a) In this section, note includes promissory note, loan or other obligation to pay.

(b) The medicaid agency or its designee determines the value of outstanding principal and interest payments using amortization schedules, unless otherwise stated in this section.

(2) A note as a resource.

(a) A note is a resource. The value of the note is the fair market value (FMV).

(b) The FMV of a note is the outstanding principal of the note, unless convincing evidence to the contrary is provided to the agency or its designee.

(c) If the note owner provides convincing evidence to the agency or its designee of a legal bar to the sale of the note, the note's FMV is zero.

(3) A note as income.

(a) Interest on a note is unearned income.

(b) If the FMV of the note under subsection (2)(c) of this section is zero, the principal portion of recurring payments is unearned income.

(c) The agency or its designee may budget the unearned income in equal monthly amounts at the request of the note owner, or at the agency or its designee's discretion. The budgeting period will be the note owner's certification period under chapter 182-504 WAC.

(4) A note as an uncompensated asset transfer.

(a) Subject to (b) of this subsection:

(i) The agency or its designee evaluates the purchase of a note as an asset transfer if the purchase price of the note exceeds the FMV of the note;

(ii) The value of the asset transfer is the difference between the purchase price of the note and the FMV of the note at the time of purchase; and

(iii) The agency or its designee determines the FMV of the note at the time of purchase using subsection (2) of this section, but can also determine the FMV of the note at a time after purchase if the agency or its designee determines FMV of the note has changed since the time it was purchased.

(b) The assets used to purchase a note are an uncompensated asset transfer under WAC 182-513-1363, unless the note:

(i) Prohibits the cancellation of the balance of the note upon death of the note owner; and

(ii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term not greater than the actuarial life expectancy of that applicant or recipient.

(c) The value of the uncompensated asset transfer under (b) of this subsection is the outstanding balance of the note due as of the date of the person's application for medical assistance for institutional or home and community-based waiver services.

(d) If a note is an asset transfer under both (a) and (b) of this subsection, then the period of ineligibility under WAC 182-513-1363 will be the period that is longest, calculated under either (a) or (b) of this subsection, but not both consecutively or concurrently.

WSR 16-14-014

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed June 24, 2016, 8:42 a.m.]

Continuance of WSR 16-11-099.

Preproposal statement of inquiry was filed as WSR 16-02-119.

Title of Rule and Other Identifying Information: Changes to Washington department of fish and wildlife's (WDFW) freshwater fishing rules resulting from stakeholder recommendations made during North of Falcon meetings and a petition filed by the Colville tribes: WAC 220-310-195 Freshwater exceptions to statewide rules—Eastside.

Hearing Location(s): Natural Resources Building, Room 259, 1111 Washington Street S.E., Olympia, WA 98501, on Friday-Saturday, August 5-6, 2016, at 8 a.m.

Date of Intended Adoption: On or after August 5, 2016.

Submit Written Comments to: Scott Bird, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by July 25, 2016.

Assistance for Persons with Disabilities: Contact Dolores Noyes by August 2, 2016, TTY (360) 902-2207 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The fish and wild-

life commission will hold a public hearing at the August 5-6 commission meeting for proposed amendments [to] WAC 220-310-195 regarding sportfishing rules for Lake Roosevelt and tributaries. The agency is continuing the proposed date of intended adoption and the deadline for written comments for WAC 220-310-195 only.

Statutory Authority for Adoption: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

June 24, 2016

Scott Bird
Rules Coordinator

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by August 9, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-76 WAC to assure compliance with the requirements of SB [SSB] 5600 and to align rule language with the statute. Additionally, revisions to chapter 388-76 WAC are being made to improve the health and safety of residents, to account for changes in technology, and to reflect the language or intent of chapter 70.128 RCW. Other changes are beneficial to adult family home business owners.

The department is also repealing two sections in chapter 388-76 WAC to condense the emergency evacuation WAC.

Reasons Supporting Proposal: This amendment will ensure the department is in compliance with the newly passed law, and that rules are clear so that the rights and safety of residents are protected.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Sherise Baltazar, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310 (4)(c), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

June 22, 2016

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-15 issue of the Register.

WSR 16-14-059
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2016, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-060.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sefa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 24, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., August 23, 2016.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesta/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on August 9, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 10, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., August 9, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by July 26, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing will amend WAC 388-442-0010 to conform to federal regulation changes regarding who is considered a fleeing felon. Federal regulations require the state to choose between two means of determining who is considered a fleeing felon and therefore ineligible for supplemental nutrition assistance program (SNAP) benefits. This WAC amendment defines how Washington basic food determines if someone is a fleeing felon.

Reasons Supporting Proposal: The department of social and health services (DSHS) will amend WAC 388-442-0010 to comply with recent changes to the Code of Federal Regulations for SNAP.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 7 C.F.R. 273.11.

Rule is necessary because of federal law, 7 C.F.R. 273.11.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4611.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. It only impacts DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

June 28, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-442-0010 ((How does being a fleeing felon impact my eligibility for benefits)) Am I eligible for benefits if I am fleeing from the law or breaking a condition for parole or probation? (1) ((You are a fleeing felon if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

((2))) If you are a fleeing felon((;)) or violating a condition of probation or parole ((as determined by an administrative body or court that has the authority to make this decision,)) you are not eligible for ((TANF/SFA)) temporary assistance for needy families (TANF), state family assistance (SFA), ((PWA)) pregnant women assistance (PWA), ((ABD)) aged, blind, or disabled (ABD) cash, referral to the ((HEN)) housing and essential needs (HEN) program, or basic food benefits.

(2) You are a fleeing felon if:

(a) A federal, state, or local law enforcement officer presents us with a felony arrest warrant that includes the national crime information center (NCIC) codes for escape (4901), flight to avoid (4902), or flight-escape (4999).

(b) The officer presenting the warrant is acting in an official capacity to obtain information on your location or other information; and

(c) You are the individual named in the warrant.

(3) You are violating a condition of parole or probation when:

(a) An administrative or judicial order has found you in violation of the terms of your parole or probation; and

(b) A law enforcement agency is actively seeking you to enforce the conditions of your parole or probation.

(4) "Actively seeking" as used in subsection (3)(b) of this section means a law enforcement agency intends to arrest you for a probation or parole violation within:

(a) Thirty days from the date we request information about the parole or probation violation; or

(b) Twenty days from the date the law enforcement agency requests information from us.

**WSR 16-14-069
PROPOSED RULES
OFFICE OF THE
STATE TREASURER**

[Filed July 1, 2016, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-070.

Title of Rule and Other Identifying Information: Chapter 389-12 WAC, Practice and procedure—Public depositaries, these rules govern the operation of the public deposit protection commission (PDPC). The rules set forth reporting requirements and operational procedures followed by financial institutions to become a public depository and maintain qualification to hold public funds while allowing the PDPC to preserve the viability and success of the program.

Hearing Location(s): Office of the State Treasurer (OST), 1110 Capitol Way South, Suite 260, Olympia, WA 98501, on August 9, 2016, at 1:30 p.m.

Date of Intended Adoption: August 9, 2016.

Submit Written Comments to: Johnna Craig, 1110 Capitol Way South, P.O. Box 40200, Olympia, WA 98504-0200, e-mail Johnna.Craig@tre.wa.gov, fax (360) 704-5181, by August 5, 2016.

Assistance for Persons with Disabilities: Contact Johnna Craig by August 5, 2016, TTY dial 7-1-1 for telecommunications relay services.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and update the requirements, terms, and conditions for financial institutions to receive and hold public funds in accordance with the Public Deposit Protection Act, as last amended by chapter 2, Laws of 2016 1st sp. sess.

Reasons Supporting Proposal: To make rules consistent with recent legislative changes to the Public Deposit Protection Act.

Statutory Authority for Adoption: RCW 39.58.040.

Statute Being Implemented: Chapter 39.58 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state treasurer, governmental.

Name of Agency Personnel Responsible for Drafting: Shad Pruitt, 1110 Capitol Way South, Suite 260, Olympia, WA 98501, (360) 902-8904; Implementation and Enforcement: Nancy Adams, 1110 Capitol Way South, Suite 260, Olympia, WA 98501, (360) 902-9077.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not regulate or have an economic impact on any small business. The rule only impacts financial institutions participating as public depositaries in Washington state.

A cost-benefit analysis is not required under RCW 34.05.328. OST is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, OST does not voluntarily make the section applicable to the adoption of this rule, and, to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

July 1, 2016

Shad Pruitt

Deputy Treasurer

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-010 Promulgation. The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter ((9)) 2, Laws of ((2009)) 2016 1st sp. sess., hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-020 Definitions. Unless the context requires otherwise:

((1)) "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

(2) "Depositor" means a state or local government with public funds on deposit with a public depositary as defined in chapter 39.58 RCW.

(3) "Investment deposits" means time deposits, savings deposits, and money market deposit accounts of public funds available for investment as defined in Regulation D, Title 12 Code of Federal Regulations (C.F.R.) Part 204. "Investment deposits" also means certificates of deposit issued in accordance with the following conditions:

(a) The funds are initially invested in an authorized Washington state public depositary;

(b) The public depositary arranges for the investment of the funds in certificates of deposit issued by one or more federally insured banks or savings and loan associations wherever located, for the depositor;

(c) The full amount of the deposit, principal and interest, of each such certificate of deposit is insured by an agency of the federal government;

(d) The public depositary acts as custodian for the depositor with respect to all such certificates of deposit issued for the depositor; and

(e) At the same time that funds are invested and the corresponding certificates of deposit are issued, the public depositary receives an amount on deposit from other federally regulated financial institutions wherever located equal to or greater than the amount of funds initially invested by the depositor.

All such investment deposits invested in accordance with conditions (a) through (e) of this subsection shall not be subject to any additional security or collateral requirement.

(4) "Commission report" means a formal accounting rendered by all public depositaries to the commission, which details pertinent information of each depositary in a format supplied by the commission.

(5) "Commission report date" means the last day of each calendar quarter.

(6) "Commission report due date" means the commission report is due in the office of the commission no later than the date a depositary's financial report is due to its federal regulatory authority.

(7) "Monthly report" means a report prepared by all public depositaries to the commission, which details insured and uninsured public funds and other pertinent information of each depositary in a format supplied by the commission.

(8) "Monthly report date" means the last day of each calendar month.

(9) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight working days after the monthly report date or other date as set by the commission.

(10) "Financial report" means the consolidated statement of condition and income required by the Federal Financial

~~Institution Examination Council or the thrift financial report required by the Office of Thrift Supervision.~~

(11) "Date of loss" means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

(a) The date of the taking of possession of the financial institution by a supervisory agency; or

(b) The date of the appointment of the receiver or conservator for a financial institution; or

(c) The date of the commencement of a voluntary liquidation proceeding for a financial institution; or

(d) The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or

(e) The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

(12) "Depository pledge agreement" means a written tripartite agreement, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to the federal reserve bank of San Francisco, the federal home loan bank of Seattle, or such other third party safekeeping agent approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman, who shall be the state treasurer. Upon completion, the agreement shall be approved by the board of directors or loan committee of the financial institution. The agreement must be continuously, from the time of its execution, an official record of the financial institution. Copies of the meeting minutes which reflect this are to be provided to the commission.

(13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository pursuant to a depository pledge agreement. A public depository must submit a written request to the commission to reduce the amount of securities pledged as collateral. The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. When a public depository pledges eligible securities whose payments include a periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

(14) "Net worth" of a public depository means the same as defined in RCW 39.58.010.

~~Net worth for public depositaries headquartered outside Washington state may be adjusted by the commission to reflect the depositaries' proportional net worth position in Washington state.~~

(15) "Corporate fiduciary" for the purposes of these rules means a financial institution as defined herein which is possessed of statutorily granted trust authority. Provided, That for the purposes of this definition such financial institution

need not be located or doing business in the state of Washington.

(16) "Out of state bank" for the purposes of these rules means a financial institution which has its principal place of business outside the state of Washington.

(17) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

"Commission report" means a formal accounting rendered by all public depositaries to the commission, which details pertinent information of each public depository in a format supplied by the commission.

"Commission report date" means the last day of each calendar quarter.

"Commission report due date" means the commission report is due in the office of the commission no later than one business day after the date a public depository's financial report is due to its federal regulatory authority.

"Date of loss" means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

- The date of the taking of possession of the financial institution by a supervisory agency;

- The date of the appointment of the receiver or conservator for a financial institution;

- The date of the commencement of a voluntary liquidation proceeding for a financial institution;

- The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or

- The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

"Depository pledge agreement" means the same as defined in RCW 39.58.010, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a trustee approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman. The agreement shall be approved by the board of directors or loan committee of the financial institution. Copies of the meeting minutes which reflect the approval are to be provided to the commission.

"Financial report" means the consolidated reports of condition and income required by the Federal Financial Institutions Examination Council.

"Monthly report" means a report prepared by all public depositaries to the commission, which details insured and uninsured public deposits and other pertinent information of each public depositary in a format supplied by the commission.

"Monthly report date" means the last day of each calendar month.

"Monthly report due date" means the monthly report is due in the office of the commission no later than eight business days after the monthly report date or other date as set by the commission.

"Net worth" of a public depositary means the same as defined in RCW 39.58.010, except that net worth for public depositaries with facilities outside Washington state may be adjusted by the commission to reflect the public depositaries' proportional net worth position in Washington state.

"Out-of-state bank" for the purposes of these rules means a financial institution located outside the state of Washington.

"Segregation of collateral" means the transfer and delivery of eligible securities by a public depositary to a trustee pursuant to a depositary pledge agreement or delivery of a letter of credit to the commission.

"Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-030 New public depositaries. Any financial institution in the state of Washington eligible under the act, in order to become a public depositary, must be approved by the commission and segregate collateral in the manner as set forth in chapter 39.58 RCW and these rules prior to the receipt of public deposits. Until such time as public depositaries have submitted four consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible ((securities)) collateral, valued ((at market value,)) in an amount equal to not less than ((10% of uninsured public funds on deposit in said depository,)) its maximum liability or such other sum or measure established by the commission by rule or ((notified)) resolution.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-040 Computation and report of maximum liability. On each commission report date each public depositary shall calculate its maximum liability in a format supplied by the commission. The commission report shall, in addition to other information required by the commission in its discretion, include the amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of uninsured public deposits for the four most recent commission report dates, and the public depositary's maximum liability as defined in chapter 39.58 RCW.

The commission report shall be received in the office of the commission by the commission report due date, and shall also include schedules, as determined by the commission, from the public depositary's most recent financial report to its federal regulatory authority. Any public depositary failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depositary the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Public depositaries shall use this amount to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised amount by the commission.

Upon ((written)) request from a public depositary the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in RCW 39.58.135, the public depositary shall immediately increase its collateral and the commission shall be so notified.

Each public depositary shall provide to the commission a copy of any changes, amendments, or alterations to the public depositary's financial report as submitted to its federal regulatory authority which relate to ((a) deposits of states and political subdivision, and/or (b)) public funds on deposit and net worth.

A monthly report of insured and uninsured public ((funds)) deposits, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depositary to the commission no later than the monthly report date. If applicable, adjustments to the public depositaries' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month. Any public depositary failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-050 Valuation. Securities pledged as collateral by a public depositary ((shall be reported at par and)) will be valued at market value. Letters of credit pledged as collateral by a public depositary will be valued at the maximum amount available to be drawn.

((Market)) Value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each public depositary shall ((provide)) certify, in a format supplied by the commission, a current listing of ((those securities)) collateral pledged and their current ((par and market)) value as of the commission report date.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-060 Deposit or withdrawal of collateral. A public depositary must submit a request to the commission to reduce the amount of collateral pledged. Except for the exchange or substitution of securities having ((a like)) an equal or greater market value, the trustee shall not permit the withdrawal of any security without advance ((written)) approval of the commission.

The trustee, under a depositary pledge agreement, shall inform the commission whenever ((assets)) securities are delivered to or released by the trustee by ((mailing)) providing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the transaction receipt ((signed by the party that accepted delivery of such assets)).

When a public depositary pledges eligible securities whose payments include periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

No costs, fees and expenses incidental to the functioning of the depositary pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depositary shall at all times maintain eligible collateral segregated and pledged ((with its trustee)) having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depositary's responsibility regardless of the frequency and form of reports required by the commission.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-065 Aggregate deposit limitations. (1) Whenever the public funds on deposit in a public depositary exceed the limits set forth in RCW 39.58.135, such public depositary shall immediately:

((1)) (a) Notify the commission; and

((2)) (b) Pledge additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

(2) When a public depositary's net worth position is reduced, such public depositary shall determine if any treasurer's or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depositary shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depositary shall also advise the commission of its intent to:

((1)) (a) Provide one hundred percent collateralization of the excess deposits; or

((2)) (b) Allow the treasurer to withdraw such deposits in accordance with RCW 39.58.130.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-071 Minimum standards for the financial condition of public depositaries. Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depositary shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depositary. If a public depositary is categorized as undercapitalized for purposes of section 38 of the FDIA, the public depositary shall pledge ((securities as)) collateral, valued ((at current market value,)) in a total amount at least equal to one hundred percent of its uninsured public deposits, or take other actions as determined by the commission; however, the commission may, at any time, in its discretion, require a public depositary to pledge additional collateral after consultation with the appropriate regulatory authorities.

The collateral pledged under this section shall not be less than the maximum liability as required in RCW ((39.58.050(1))) 39.58.010, but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)**WAC 389-12-075 Collateral level to be maintained.**

Whenever a public depositary must pledge ((securities as)) collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the public depositary must monitor its uninsured public ((funds on)) deposits on a daily basis and maintain ((securities,)) collateral valued ((at current market value,)) accordingly.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation of any ((financial institution)) public depositary, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depositary's net worth has remained unchanged from that stated in the most recently rendered commission report.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-100 Violations—Sanction. If a public depositary fails to comply with any of these rules, or of any of the provisions of the act, or any policies of the commission, the commission may at its option deny or revoke the authority of such public depositary to act as ((a public depositary)) such, or otherwise suspend such public depositary from receiving or holding public deposits until such time as the public depositary complies with the commission's rules and policies.

AMENDATORY SECTION (Amending Order 1, filed 2/9/70)

WAC 389-12-120 Administration. The ((Washington public deposit protection)) commission shall be administered through the office of the Washington State Treasurer, ((Legislative Building,)) Olympia, Washington.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-130 Financial institution mergers. Within thirty calendar days of any merger, take over, or acquisition of a public depository, the acquiring financial institution must: (1) Be a public depository, or (2) become a public depository as provided for in WAC 389-12-030, or (3) notify the commission of its intent not to become a public depository. A financial institution electing not to become a public depository must work with the commission, treasurers, and the state treasurer to orderly discharge public deposits.

The maximum liability of a public depository under chapter 39.58 RCW shall not be altered or diminished by any merger, take over, or acquisition. Such liability shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no ((assets subject to a depository pledge agreement)) pledged collateral shall be released by the commission or the trustee until such assumed liability is extinguished or evidenced ((by the deposit of assets pursuant to the depository pledge agreement of)) through the segregation of collateral by the successor entity or resulting financial institution.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-140 Demand deposit account with financial institution located outside the state of Washington. A treasurer or state treasurer may, as provided in chapter 39.58 RCW, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depository; (4) name and location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it ((shall have)) has been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and

conditions for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 389-12-047	Computation of maximum liability—Transition.
WAC 389-12-200	Purpose.
WAC 389-12-210	Definitions.
WAC 389-12-220	Description of the Washington public deposit protection commission.
WAC 389-12-230	Operations and procedures.
WAC 389-12-240	Public records available.
WAC 389-12-250	Public records officer.
WAC 389-12-270	Requests for public records.
WAC 389-12-280	Inspection and copying.
WAC 389-12-290	Exemptions.
WAC 389-12-300	Review of denials of public records requests.
WAC 389-12-310	Records index.
WAC 389-12-320	Request for commission's decisions and other matters—Procedure.
WAC 389-12-330	Adoption of form.
WAC 389-12-990	Appendix A—Form—Request for public records.

**WSR 16-14-071
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed July 1, 2016, 9:15 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-13-090 How is an employee affected when his/her position is reallocated?, 357-19-505 What is the purpose of the return-to-work initiative program?, and 357-46-095 Who is eligible for the general government transition pool program?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 11, 2016, at 8:30 a.m.

Date of Intended Adoption: August 11, 2016.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax

(360) 586-4694, by August 4, 2016. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 4, 2016, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2011, E2SB [ESSB] 5931 (Reorganizing and streamlining central service functions, powers, and duties of state government) removed the requirement which allowed employees to participate in the statewide return-to-work initiative program. As a result, rules (WAC) that addressed this program were repealed. WAC 357-46-095(3) and 357-19-505, which reference the return-to-work initiative program, were inadvertently missed and therefore these rules were not repealed at that time.

OFM is proposing to amend WAC 357-46-095(3) and 357-13-090 to allow employees who are reallocated to a class with a lower salary range maximum to be placed in the general government transition pool.

Reasons Supporting Proposal: This proposal will align these rules with current law and practice.

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
Employee's position reallocated to:			
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list <u>and in the general government transition pool</u>; and has his/her salary set in accordance with WAC 357-28-120.</p>

<p>This table is used to determine how an employee whose position is reallocated is affected.</p>			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
<p>Reallocation results from:</p>			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <ul style="list-style-type: none"> → The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements. If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class. Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed step M of the range as provided in WAC 357-28-115. 	<p><i>If the employee meets the competencies and other position requirements:</i></p> <ul style="list-style-type: none"> → The employee retains the previous base salary in accordance with WAC 357-28-120. <p><i>If the employee does not meet the competencies and other position requirements:</i></p> <ul style="list-style-type: none"> → The employer's layoff procedure applies. 	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <ul style="list-style-type: none"> → The employer's layoff procedure applies.
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-505 What is the purpose of the return-to-work initiative program?

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-095 Who is eligible for the general government transition pool program? The following individuals are eligible to participate in the general government transition pool program:

(1) All general government permanent employees separated by layoff or notified by their employer that they are at

risk of layoff. This includes Washington management service permanent employees who are separated by layoff or notified by their employer that they are at risk of layoff;

(2) All general government permanent employees who are reverted and not returned to a permanent position in the ((class)) classification in which the employee last held permanent status;

(3) ((Employees who are eligible to participate in the return to work initiative program in accordance with chapter 357-19 WAC;)) All general government permanent employees who are reallocated to a classification with a lower salary range maximum;

(4) Permanent Washington management service employees who accept a position in Washington general service and are being voluntarily or involuntarily reverted during the trial service period;

(5) Former permanent classified general government employees who have submitted a written request for reemployment within two (2) years of disability separation and who have met the reemployment requirements of WAC 357-19-475;

(6) General government employee business unit members whose contract has expired or been terminated; and

(7) Permanent Washington management service employees who accept acting appointments and who do not return on the agreed upon date in accordance with WAC 357-58-275.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 1, 2016

Roselyn Marcus

Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WSR 16-14-073
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 1, 2016, 9:20 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05-330(1).

Title of Rule and Other Identifying Information: WAC 357-28-035 What must be addressed in the employer's salary determination policy?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 11, 2016, at 8:30 a.m.

Date of Intended Adoption: August 11, 2016.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 4, 2016. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 4, 2016, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendment addresses the requirements that upon return to a permanent position from a project position, an acting Washington management service appointment or a nonpermanent appointment, the setting of an employee's base salary must be addressed in the employer's salary determination policy.

Reasons Supporting Proposal: Clarifies the requirements in WAC 357-19-340, 357-19-353, and 357-19-395.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA 98501, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

WAC 357-28-035 What must be addressed in the employer's salary determination policy? The employer's salary determination policy must minimally address the following:

(1) Setting base salary for new employees;

(2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;

(3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;

(4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;

(5) Setting base salary when an employee is appointed from an internal or statewide layoff list;

(6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step M of the new salary range as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary;

(7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;

(8) Setting base salary when an employee is reverted following a voluntary demotion;

(9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100; ((and))

(10) Setting base salary and progression based on recruitment and retention rather than years of experience for the nurse special pay salary schedules, if allowed by the employer;

(11) Setting base salary in accordance with WAC 357-19-340 when an employee returns to a permanent position from a project position;

(12) Setting base salary in accordance with WAC 357-19-353 when an employee returns to a permanent position from an acting WMS appointment; and

(13) Setting base salary in accordance with WAC 357-19-395 when an employee returns to a permanent position from a nonpermanent appointment.

WSR 16-14-074
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 1, 2016, 9:23 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-46-060 Does a veteran receive any preference in layoff? and 357-58-475 Does a veteran receive any preference in lay-off?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 11, 2016, at 8:30 a.m.

Date of Intended Adoption: August 11, 2016.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 4, 2016. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 4, 2016, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes correct the references from unbroken service date to seniority date for Washington general service and Washington management service employees that are eligible for veteran's preference in a layoff.

Reasons Supporting Proposal: Clarifies the rules to ensure consistent interpretation. Per RCW 41.06.133 [(1)](m), an eligible veteran receives a preference in a layoff by having their seniority date increased by adding up to five years of their active military service to their seniority date.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA 98501, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 1, 2016
 Roselyn Marcus
 Assistant Director of
 Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 10-11-073, filed 5/14/10, effective 6/15/10)

WAC 357-46-060 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference in layoff by having their seniority increased((. This is done by adding the eligible veteran's total active military service, not to exceed five years, to their unbroken service date)) for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired, as evidenced by the "DD Form 214" or other official military records, with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-58-475 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference in layoff by having ((his/her)) their seniority increased((. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date)) for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more

years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

WSR 16-14-075
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 1, 2016, 9:28 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-31-445 What happens to leave that was donated under the state leave sharing program and was not used by the recipient? and 357-31-447 When must an employer approve a shared leave request for an employee?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 11, 2016, at 8:30 a.m.

Date of Intended Adoption: August 11, 2016.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 4, 2016. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 4, 2016, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2557 went into effect June 9, 2016. HB 2557 changes the conditions in which shared leave is returned to the donor(s). The bill provides that unused shared leave may not be returned to the donor until a statement from the employee's licensed physician or health care practitioner is obtained verifying that the illness or injury is resolved or the employee is released by their health care practitioner or licensed physician to return to their normal schedule; has not received medical treatment for their current condition or any other qualifying condition for at least six months; and the employee's licensed physician or health care practitioner has declined, in writing, the employee's request for a statement indicating the condition has been resolved. OFM is proposing to amend WAC 357-31-445 to address these changes.

In addition, this bill added a reason when shared leave must be approved. A proposed new rule would provide that shared leave must be approved if a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account.

Reasons Supporting Proposal: To align Title 357 WAC with the changes in HB 2557, which was effective on June 9, 2016.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA 98501, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 1, 2016

Roselyn Marcus
 Assistant Director of
 Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-17-126, filed 8/20/07, effective 9/20/07)

WAC 357-31-445 What happens to leave that was donated under the state leave sharing program and was not used by the recipient? (1) Any shared leave not used by the recipient during each incident/occurrence as determined by the employer must be returned to the donor(s).

(a) If shared leave has been granted ((under WAC 357-31-390 (1)(a), before the employer makes a determination to return the unused leave to the donor(s))) for an employee that suffers from an illness, injury, impairment, or physical mental condition which is of an extraordinary or severe nature unused shared leave may not be returned to the donor until one of the following occurs:

(i) The employer ((must)) receives ((from the affected employee's licensed physician or health care practitioner)) a statement from the affected employee's licensed physician or health care practitioner verifying that the ((employee is released to return to work.)) illness or injury is resolved; or

(ii) The employee is released by their licensed physician or health care practitioner to return to their normal schedule; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's licensed physician or health care practitioner has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

(b) The remaining shared leave must be returned to the donors and reinstated to the respective donors' appropriate leave balances based on each employee's current salary rate at the time of the reversion. The shared leave returned must be returned in accordance with office of financial management policies.

(2) Unused shared leave may not be cashed out by a recipient.

NEW SECTION

WAC 357-31-447 When must an employer approve a shared leave request for an employee? An employer must approve a new shared leave request for an employee if a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account.

**WSR 16-14-094
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**
[Filed July 5, 2016, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-090.

Title of Rule and Other Identifying Information: WAC 296-127-01324 Electrician—Motor shop.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on August 19, 2016, at 9 a.m.

Date of Intended Adoption: September 20, 2016.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Beverly.Clark@Lni.wa.gov, fax (360) 902-4988, by 5 p.m., August 19, 2016. Written comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by 5 p.m. on August 1, 2016, at Beverly.Clark@Lni.wa.gov or (360) 902-6272.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule is to adopt a new rule as a prevailing wage scope of work description for motor shop electricians. This trade and occupation classification has not previously had any scope of work description but does have published prevailing rates of wage. Prior to 2000, the prevailing wage scope of work descriptions (if any) were promulgated by the industrial statistician on an as needed basis (and not adopted as administrative rule). No scope was promulgated for motor shop electricians.

Reasons Supporting Proposal: Clearly identifying the extent of this trade and occupation will assist in better identifying the exact universe [universal way] to survey in order to establish the prevailing rate of wage for this trade and occupation classification as well as having a defensible description of the trade for any wage compliance matters. The prevailing wage program notified hundreds of motor shop businesses by letter of its intention to proceed with a scope of work rule-making process and invited them to participate through the prevailing wage advisory committee (PWAC) meetings or their independent communications with L&I. The program worked with PWAC, and its representation from business, labor, public agencies, as well as participation from the public regarding development of this draft scope of work description for motor shop electricians. Consensus was obtained to move this draft forward into rule making.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Statute Being Implemented: Chapter 39.12 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Christensen, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Elizabeth Smith, Tumwater, Washington, (360) 902-6320.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department's pro-

**WSR 16-14-082
WITHDRAWL OF PROPOSED RULES
COLUMBIA BASIN COLLEGE**
(By the Code Reviser's Office)
[Filed July 5, 2016, 8:24 a.m.]

WAC 132S-300-350, proposed by the Columbia Basin College in WSR 16-01-007, appearing in issue 16-01 of the Washington State Register, which was distributed on January 6, 2016, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

**WSR 16-14-083
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF HEALTH**
(By the Code Reviser's Office)
[Filed July 5, 2016, 8:28 a.m.]

WAC 246-933-420, proposed by the department of health in WSR 16-01-043, appearing in issue 16-01 of the Washington State Register, which was distributed on January 6, 2016, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

**WSR 16-14-084
WITHDRAWL OF PROPOSED RULES
HEALTH CARE AUTHORITY**
(By the Code Reviser's Office)
[Filed July 5, 2016, 8:34 a.m.]

WAC 182-538B-210, proposed by the health care authority in WSR 16-01-173, appearing in issue 16-01 of the Washington State Register, which was distributed on January 6, 2016, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

posed rules are subject to the Regulatory Fairness Act, but they do not require a small business economic impact statement because the proposed changes do not impose more than a minor cost (see RCW 19.85.025 030 [19.85.030] (1)(a)). The changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The changes in the proposed rule will not alter any current agency practice or interpretation of law. The changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

July 5, 2016
E. LaPalm
for Joel Sacks
Director

NEW SECTION

WAC 296-127-01324 Electrician-motor shop. For the purpose of the Washington state public works law, chapter 39.12 RCW, Electrician—Motor shop performs in-shop repair and maintenance on A.C. and D.C. electric motors and controllers. This work includes, but is not limited to:

Assembles and tests electric motor and generator stators, armatures, or rotors. Inspects cores for defects and aligns laminations, using hammer and drift. Files burrs from core slots, using hand file, portable power file, and scraper. Lines slots with sheet insulation and inserts coils into slots. Cuts, strips, and bends wire leads at ends of coils, using pliers and wire scrapers. Twists leads together to connect coils. Taps coil and end windings to shape, using hammer and fiber block. Tests windings for motor-housing clearance, grounds, and short circuits, using clearance gauge, growler, spring-steel blade, telephone receiver, insulation tester, and resistance bridge. Winds new coils on armatures, stators, or rotors of used motors and generators. May rewind defective coils. Turns armatures. Tests circuits, connections, controllers, and transformers. May be designated according to motor part wound as armature winder (electrical equipment); rotor winder (electrical equipment); stator winder (electrical equipment).

The work of the motor shop electrician is limited to in-shop work.

WSR 16-14-095
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 5, 2016, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-091.

Title of Rule and Other Identifying Information: WAC 296-127-01366 Ready mix truck drivers.

Proposed

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on August 19, 2016, at 9 a.m.

Date of Intended Adoption: September 20, 2016.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Beverly.Clark@Lni.wa.gov, fax (360) 902-4988, by August 19, 2016. Written comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by 5 p.m. on August 1, 2016, at Beverly.Clark@Lni.wa.gov or (360) 902-6272.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will adopt a new rule as a prevailing wage scope of work description for ready mix truck drivers. This trade and occupation classification has not previously had any scope of work description but does have published prevailing rates of wage. Prior to 2000, the prevailing wage scope of work descriptions (if any) were promulgated by the industrial statistician on an as needed basis (and not adopted as administrative rule). No scope was promulgated for ready mix truck drivers.

Reasons Supporting Proposal: Although distinguishing who is driving a concrete mixer truck on a public works [project] has not been overly difficult even absent a scope of work description, clearly identifying the extent of this trade and occupation will assist in better identifying the exact universe [universal way] to survey in order to establish the prevailing rate of wage for this trade and occupation classification as well as having a defensible description of the trade for any wage compliance matters. The prevailing wage program worked with the prevailing wage advisory committee, representation from business, labor, public agencies, and participation from the public, as well as the Teamsters, and the Washington Aggregates and Concrete Association, regarding development of this draft scope of work description for ready mix truck drivers. Consensus was obtained to move this draft forward into rule making.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Statute Being Implemented: Chapter 39.12 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Christensen, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Elizabeth Smith, Tumwater, Washington, (360) 902-6320.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department's proposed rules are subject to the Regulatory Fairness Act, but they do not require a small business economic impact statement because the proposed changes do not impose more than a minor cost (see RCW 19.85.025 030 [19.85.030] (1)(a)). The changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The changes in the proposed rule will not alter any current agency practice or interpretation of law. The changes in the proposed rule do not place any new obligations on

employers and they do not require employers to incur additional costs.

July 5, 2016
 E. LaPalm
 for Joel Sacks
 Director

NEW SECTION

WAC 296-127-01366 Ready mix truck drivers. For the purpose of the Washington state public works law, chapter 39.12 RCW, ready mix truck drivers drive transit mixer and volumetric type trucks used for the transportation of wet concrete products to, from, and on construction projects, consistent with the provisions in WAC 296-127-018.

The work includes, but is not limited to, the use of any transit mixer or volumetric type truck used to deliver wet concrete.

**WSR 16-14-096
 PROPOSED RULES
 DEPARTMENT OF
 LABOR AND INDUSTRIES**

[Filed July 5, 2016, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-092.

Title of Rule and Other Identifying Information: WAC 296-127-01398 Truck drivers.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on August 19, 2016, at 9 a.m.

Date of Intended Adoption: September 20, 2016.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Beverly.Clark@Lni.wa.gov, fax (360) 902-4988, by 5 p.m., August 19, 2016. Written comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by 5 p.m. on August 1, 2016, at Beverly.Clark@Lni.wa.gov or (360) 902-6272.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule is to adopt a new rule as a prevailing wage scope of work description for truck drivers. This trade and occupation classification has not previously had any scope of work description but does have published prevailing rates of wage. Prior to 2000, the prevailing wage scope of work descriptions (if any) were promulgated by the industrial statistician on an as needed basis (and not adopted as administrative rule). No scope was promulgated for truck drivers.

Reasons Supporting Proposal: Although distinguishing who is driving a truck on a public works [project] has not been overly difficult even absent a scope of work description, clearly identifying the extent of this trade and occupation will assist in better identifying the exact universe [universal way] to survey in order to establish the prevailing rate of wage for

this trade and occupation classification as well as having a defensible description of the trade for any wage compliance matters. The prevailing wage program worked with the prevailing wage advisory committee, representation from business, labor, public agencies, and participation from the public, as well as the Teamsters, regarding development of this draft scope of work description for truck drivers. Consensus was obtained to move this draft forward into rule making.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Statute Being Implemented: Chapter 39.12 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Christensen, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Elizabeth Smith, Tumwater, Washington, (360) 902-6320.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department's proposed rules are subject to the Regulatory Fairness Act, but they do not require a small business economic impact statement because the proposed changes do not impose more than a minor cost (see RCW 19.85.025 030 [19.85.030] (1)(a)). The changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The changes in the proposed rule will not alter any current agency practice or interpretation of law. The changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

July 5, 2016

E. LaPalm
 for Joel Sacks
 Director

NEW SECTION

WAC 296-127-01398 Truck drivers. For the purpose of the Washington state public works law, chapter 39.12 RCW, truck drivers drive various types of trucks, other than transit mixer and volumetric type trucks hauling concrete, used for the hauling of materials and equipment related to work covered under chapter 39.12 RCW.

The work of truck drivers includes, but is not limited to, truck driving to do the following:

(1) Delivery, discharge of materials, travel time, and other work according to the provisions of WAC 296-127-018;

(2) Delivery of project specific (nonstandard) items to the job site;

(3) Mobilization of contractors' equipment;

(4) Driving and operating various types of trucks at, on or for the project; and

(5) Removing any materials from a public works construction site pursuant to contract requirements or specifications (e.g., excavated materials, materials from demolished structures, clean-up materials, etc.).

WSR 16-14-097
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 5, 2016, 12:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-085.

Title of Rule and Other Identifying Information: WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Hearing Location(s): Department of Labor and Industries (L&I), 950 Broadway, Suite 200, Tacoma, WA 98402-4453 (for directions to the L&I Office <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/tacoma.asp>), on August 24, 2016, at 10:00 a.m.

Date of Intended Adoption: August 25, 2016.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail sally.elliott@lni.wa.gov, fax (360) 902-4202, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Sally Elliott by August 10, 2016, at (360) 902-6411 or sally.elliott@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules is amending WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?, to increase fees by the fiscal-growth factor of 4.32 percent for fiscal year 2017 (OFM's maximum allowable fiscal growth rate). The boiler program's budget and projected revenue indicate a fee increase is necessary to cover the program's operating expenses.

Reasons Supporting Proposal: The rule making is needed to ensure the boiler program's revenues match expenditures; otherwise, service levels may need to be reduced. The last fiscal-growth increase took effect on June 30, 2012.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed change to WAC 296-104-700 generates probable benefits that exceed probable costs; moreover, the probable imposed costs are believed to be no more than [a] minor cost to businesses. As such, the department is exempt from conducting a small business economic impact statement for this rule making.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-4202, e-mail sally.elliott@lni.wa.gov.

July 5, 2016

Terry Chapin

Chair, Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 13-10-018, filed 4/23/13, effective 6/1/13)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee): \$((50.00)) 52.10.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$((21.50)) 22.40.

Hot water heaters per RCW 70.79.090, inspection fee: \$((6.70)) 6.90.

	Internal	External
Cast iron—All sizes	\$((36.30)) <u>37.80</u>	\$((29.00)) <u>30.20</u>
All other boilers less than 500 sq. ft.	\$((36.30)) <u>37.80</u>	\$((29.00)) <u>30.20</u>
500 sq. ft. to 2500 sq. ft.	\$((72.40)) <u>75.50</u>	\$((36.30)) <u>37.80</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((29.00)) <u>30.20</u>	\$((14.20)) <u>14.80</u>
Power boilers:		
Less than 100 sq. ft.	\$((36.30)) <u>37.80</u>	\$((29.00)) <u>30.20</u>
100 sq. ft. to less than 500 sq. ft.	\$((43.90)) <u>45.80</u>	\$((29.00)) <u>30.20</u>
500 sq. ft. to 2500 sq. ft.	\$((72.40)) <u>75.50</u>	\$((36.30)) <u>37.80</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((29.00)) <u>30.20</u>	\$((14.20)) <u>14.80</u>
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.		
Less than 15 sq. ft.	\$((29.00)) <u>30.20</u>	\$((21.50)) <u>22.40</u>
15 sq. ft. to less than 50 sq. ft.	\$((43.90)) <u>44.80</u>	\$((21.50)) <u>22.40</u>
50 sq. ft. to 100 sq. ft.	\$((50.10)) <u>52.30</u>	\$((29.00)) <u>30.20</u>
For each additional 100 sq. ft. or any portion thereof	\$((50.10)) <u>52.20</u>	\$((14.20)) <u>14.80</u>

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	\$((43.90)) <u>45.80</u>
For each hour or part of an hour in excess of 8 hours	\$((65.50)) <u>68.30</u>

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours	\$((65.50)) <u>68.30</u>
For each hour or part of an hour in excess of 8 hours	\$((102.40)) <u>106.80</u>

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours	\$((43.90)) <u>45.80</u>
For each hour or part of an hour in excess of 8 hours	\$((65.50)) <u>68.30</u>

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours	\$((65.50)) <u>68.30</u>
For each hour or part of an hour in excess of 8 hours	\$((102.40)) <u>106.80</u>

Examination fee: A fee of ~~\$((84.00))~~ 84.50 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of ~~\$((43.80))~~ 45.70 for initial work card. A fee of ~~\$((27.30))~~ 28.40 for annual renewal.

If a special inspector changes companies: A work card fee of ~~\$((43.80))~~ 45.70.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of ~~\$((407.40))~~ 425.00 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 16-14-098

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed July 5, 2016, 2:18 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-853-990 Osteopathic fees and renewal cycle and 246-933-990 Veterinarian fees and renewal cycle, the department is proposing fee changes for osteopathic physicians, osteopathic physician assistants, and veterinarians to implement HB 2432 (chapter 42, Laws of 2016). The proposed fee changes would support the substance abuse monitoring program by increasing the impaired practitioner program license surcharge for these professions. The department is also proposing reductions in initial and renewal licensing fees.

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road, Room 158, Tumwater, WA 98501, on August 11, 2016, at 11:00 a.m.

Date of Intended Adoption: August 18, 2016.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by August 11, 2016.

Assistance for Persons with Disabilities: Contact Sherry Thomas by July 27, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal implements HB 2432 (chapter 42, Laws of 2016), which increases the substance abuse monitoring program license surcharge for osteopathic physicians and osteopathic physician assistants from \$25 to \$50 per year and the surcharge for veterinarians to the maximum \$25 fee. These programs contract with the Washington physicians health program (WPHP) to administer their substance abuse monitoring programs. Surcharges are paid directly to WPHP; the revenue from the surcharges is not included in the profession's licensing budgets.

The department is also proposing decreases in initial and renewal license fees for all three professions.

In addition to increasing the substance abuse monitoring surcharge as directed in HB 2432, the department is proposing the following decreases (rounded to the nearest five dollars) in initial and license renewal fees:

Veterinarian fees:

- Decrease renewal fees by \$15 (nine percent) to offset the \$15 surcharge increase while maintaining an acceptable ending fund balance.
- Decrease initial license fee by \$15 (nine percent), resulting in an overall reduction to the initial license fee since the surcharge is only charged on renewals.
- Decrease late renewal penalties (see below).

Osteopathic physician and physician assistant fees:

- Decrease application and renewal fees by twelve percent (for example, a \$50 decrease on original applications and renewals and a \$40 decrease for inactive license renewals). This twelve percent

reduction offsets the \$25 surcharge increase and further lowers initial and renewal license fees while maintaining an acceptable ending fund balance.

- Decrease late renewal penalties (see below).

The department conducted fee studies and determined these professions' budgets can support the fee decreases while retaining adequate fund balances to cover unanticipated expenditures, such as costly disciplinary cases that may occur. The result will be that licensees in all three professions will pay the same or lower initial and renewal license fees, even with the increased surcharges.

Late renewal penalties: Late renewal penalties are not figured into the fee study described above. It is difficult to anticipate how many practitioners will be late in renewing, but it is a small percentage of renewals. In addition, late penalties are used to recover additional costs involved in processing late renewals, which cannot be automated like on-time renewals. Late penalties are set using the following standards:

If the annual renewal fee is:

- \$1 to \$50, the late renewal penalty is set at one hundred percent of the renewal fee.
- \$50 to \$100, the late renewal penalty is set at \$50.
- \$101 or more, the late renewal penalty is set at fifty percent of the renewal fee, and no more than \$300.

Reasons Supporting Proposal: WPHP protects patient safety by providing assistance to impaired health care professionals. Periodic increases are necessary to maintain this program. In addition, the department conducted fee studies and determined these licensing programs' budgets support decreasing initial and renewal license fees, while retaining sufficient fund balances to cover unanticipated expenditures, like increased disciplinary cases, that may occur. This will result in the licensees paying the same or lower initial and renewal license fees, even with the increased surcharges.

Statutory Authority for Adoption: Chapter 42, Laws of 2016, RCW 18.130.175, and 43.70.250.

Statute Being Implemented: Chapter 42, Laws of 2016 and RCW 43.70.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 5, 2016

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Original application	
Endorsement application	\$((425.00)) <u>375.00</u>
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((425.00)) <u>375.00</u>
Late renewal penalty	((250.00)) <u>190.00</u>
Expired license reissuance	250.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Inactive license renewal	
Renewal	((350.00)) <u>310.00</u>
Expired license reissuance	225.00
Late renewal penalty	((175.00)) <u>155.00</u>
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Retired active license renewal	
Renewal	((219.00)) <u>195.00</u>
Late renewal penalty	((110.00)) <u>100.00</u>
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Endorsement/state exam application	
Reexam	500.00
((Certification)) Verification of license	
	100.00
	50.00

Title of Fee	Fee	Title of Fee	Fee
Limited license		<u>((State examination (initial/retake))</u>	\$210.00
Application	((325.00)) <u>285.00</u>	<u>Initial state license</u>	160.00
Renewal	((300.00)) <u>265.00</u>	<u>Specialty licensure</u>	155.00
UW online access fee (HEAL-WA)	16.00	<u>Impaired veterinarian assessment</u>	10.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>	<u>Temporary permit</u>	235.00
Temporary permit application	70.00	<u>State or specialty license renewal</u>	175.00
Duplicate certificate	20.00	<u>Retired active license and renewal</u>	85.00
(4) The following nonrefundable fees will be charged for osteopathic physician assistants:		<u>Late renewal penalty (state and specialty license)</u>	95.00
Title of Fee	Fee	<u>Expired license reissuance</u>	90.00
Original application		<u>Late renewal penalty (retired active license)</u>	90.00
Application	\$((250.00)) <u>220.00</u>	<u>Duplicate license</u>	30.00
UW online access fee (HEAL-WA)	16.00	<u>Certification of license</u>	30.00))
Active license renewal		Original application	
Renewal	((250.00)) <u>220.00</u>	<u>State examination (initial/retake)</u>	\$210.00
Late renewal penalty	((150.00)) <u>110.00</u>	<u>Initial state license</u>	145.00
Expired license reissuance	100.00	Specialty license	140.00
UW online access fee (HEAL-WA)	16.00	Temporary permit	215.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>	State or specialty license renewal	
Retired active license renewal		<u>Renewal</u>	160.00
Renewal	((134.00)) <u>120.00</u>	<u>Impaired veterinarian assessment</u>	25.00
Late renewal penalty	((75.00)) <u>60.00</u>	<u>Late renewal penalty</u>	80.00
UW online access fee (HEAL-WA)	16.00	<u>Expired license reissuance</u>	90.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>	Retired active license and renewal	
((Certification)) Verification of license	30.00	<u>Renewal</u>	70.00
Interim permit	200.00	<u>Impaired veterinarian assessment</u>	25.00
License after exam	100.00	<u>Late renewal penalty</u>	50.00
Duplicate certificate	20.00	Duplicate license	30.00
AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)		Verification of license	30.00)

WAC 246-933-990 Veterinarian fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

**WSR 16-14-099
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING**
[Filed July 5, 2016, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-046.

Title of Rule and Other Identifying Information: WAC 170-100-090 Staff qualifications.

Hearing Location(s): Spokane Public Library, Downtown Branch, Room 1A, 906 West Main Avenue, Spokane, WA 99201, on Tuesday, August 9, 2016, at 6:00 p.m.; and at the Department of Early Learning (DEL), State Office, Room 113, 1110 Jefferson Street S.E., Olympia, WA 98501, on Wednesday, August 10, 2016, at 3:30 p.m.

Date of Intended Adoption: Not earlier than August 10, 2016.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by August 10, 2016.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by July 28, 2016, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to clarify that the department's background check laws, rules and requirements are applicable to and include the early childhood education and assistance program (ECEAP).

Reasons Supporting Proposal: The Washington state legislature passed the Early Start Act during the 2015 legislative session. The act directs the department to adopt rules requiring DEL to conduct fingerprint background checks for the ECEAP program. This proposed rule making clarifies an earlier permanent rule making (WSR 15-24-040) by stating who is required to obtain a fingerprint background check in the ECEAP program. This rule making enhances and promotes the health and safety of children participating in ECEAP.

Statutory Authority for Adoption: RCW 43.215.070; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Luba Bezborodnikova, Assistant Director for ESA and Nicole Rose, Assistant Director for QPPG, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW. Washington law does not require providers to pay for these fingerprint background checks. See RCW 43.215.215(2).

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

June 21, 2016
Ross Hunter
DEL Director

AMENDATORY SECTION (Amending WSR 15-24-040, filed 11/20/15, effective 1/1/16)

WAC 170-100-090 Staff qualifications. (1) Contractors must provide adequate staff to comply with all ECEAP performance standards.

(2) Contractors must ((ensure that all ECEAP)) require their staff and other persons associated with the contractor that are considered to be a "subject individual" as defined in WAC 170-06-0020, and who may have unsupervised access to children ((comply)), to obtain a fingerprint background

check in compliance with the ((background check procedures in)) requirements of RCW 43.215.215, 43.215.425 and chapter 170-06 WAC.

(3) All persons serving in the role of ECEAP lead teacher must meet one of the following qualifications:

(a) An associate or higher degree with the equivalent of thirty college quarter credits of early childhood education. These thirty credits may be included in the degree or in addition to the degree; or

(b) A valid Washington state teaching certificate with an endorsement in early childhood education (pre-K - grade 3) or early childhood special education.

(4) All persons serving in the role of ECEAP assistant teacher must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program assistant teacher in the same agency before July 1, 1999;

(b) The equivalent of twelve college quarter credits in early childhood education;

(c) Initial or higher Washington state early childhood education certificate; or

(d) A current Child Development Associate (CDA) credential awarded by the Council for Early Childhood Professional Recognition.

(5) All persons serving in the role of ECEAP family support staff must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family support staff in the same agency before July 1, 1999;

(b) An associate's or higher degree with the equivalent of thirty college quarter credits of adult education, human development, human services, family support, social work, early childhood education, child development, psychology, or another field directly related to their job responsibilities. These thirty credits may be included in the degree or in addition to the degree; or

(c) A degree, credential or certificate from a comprehensive and competency-based program that increases knowledge and skills in providing direct family support services to families.

(6) All persons serving in the role of ECEAP health advocate must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family support aide or health aide in the same agency before July 1, 2014; or

(b) The equivalent of twelve college quarter credits in family support, public health, health education, nursing, or another field directly related to their job responsibilities.

(7) The early childhood education and assistance program health consultant must meet one of the following qualifications:

(a) Licensed in Washington state as a registered nurse (R.N.) or physician (M.D., N.D., D.O.); or

(b) A bachelor's or higher degree in public health, nursing, health education, health sciences, medicine, or related field.

(8) The early childhood education and assistance program nutrition consultant must meet one of the following qualifications:

(a) Registered dietitian (RD) credentialed through the Commission on Dietetic Registration (CDR), the credentialing agency for the Academy of Nutrition and Dietetics (formerly the American Dietetic Association); or

(b) Washington state certified nutritionist under chapter 18.138 RCW.

(9) The early childhood education and assistance program mental health consultant must meet one of the following qualifications:

(a) Licensed by the Washington state department of health as a mental health counselor, marriage and family therapist, social worker, psychologist, psychiatrist, or psychiatric nurse;

(b) Approved by the Washington state department of health as an agency affiliated or certified counselor, with a master's degree in counseling, social work or related field; or

(c) Credentialed by the Washington state office of the superintendent of public instruction as a school counselor, social worker, or psychologist.

(10) Contractors must hire and employ staff who meet the qualifications for their position.

(a) If the best candidate for the position is not fully qualified, the contractor must ensure the newly hired staff person is on a professional development plan (PDP) to fully meet the qualifications of their role within five years from the date of hire.

(b) Contractors must monitor progress on all PDPs and ensure staff make adequate yearly progress to meet the required qualifications.

(11) Equivalent degrees and certificates from other states and countries are accepted for ECEAP staff qualifications.

Reasons Supporting Proposal: The payment of a source market fee may not be feasible when a racing association operates an ADW firm. New language sets a percentage of the Washington resident wagering to be returned to the commission and industry when a source market fee is not collected.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Washington horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

July 5, 2016

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-020 Requirements to conduct authorized advance deposit wagering. (1) The advance deposit wagering rules set forth in this chapter shall apply to the establishment and operation of accounts by an authorized advance deposit wagering service provider for applicants whose principal residence address is in the state of Washington.

(2) Advance deposit wagering by any person whose principal residence address is in the state of Washington may be conducted only by an authorized advance deposit wagering service provider licensed by the commission pursuant to this chapter.

(3) A class 1 racing association must ((obtain commission approval of its)) have a contract in place with an authorized advance deposit wagering service provider that complies with all state and federal laws and regulations. Contracts shall be approved by the commission.

(4) No advance deposit wagering service provider shall solicit, accept, open or operate an account for any person with a principal residence address in the state of Washington unless the service provider has received a license in good standing from the commission.

(5) The commission may suspend or revoke a license to operate as an authorized advance deposit wagering service provider, withdraw approval of a contract between a class 1 racing association and an authorized advance deposit wagering service provider and/or impose fines, if the authorized advance deposit wagering service provider, its officers, directors, or employees violate chapter 67.16 RCW or Title 260 WAC.

(6) An authorized advance deposit wagering service provider located within Washington shall not solicit, accept, open or operate advance deposit wagering accounts for persons whose principal residence is outside of the state of

WSR 16-14-100

PROPOSED RULES

HORSE RACING COMMISSION

[Filed July 5, 2016, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-064.

Title of Rule and Other Identifying Information: WAC 260-28-100 Change of trainers [chapter 260-49 WAC, Advance deposit wagering].

Hearing Location(s): Emerald Downs, 2300 Ron Crockett Drive, Shimpoch Room, Auburn, WA 98001, on August 12, 2016, at 9:30 a.m.

Date of Intended Adoption: August 12, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by August 9, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by August 9, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends language regarding a Class A or B association which operates an advanced deposit wagering (ADW) firm. Updates other sections to reflect changes in chapter 67.16 RCW and current practice.

Washington, including residents of foreign jurisdictions unless:

(a) The service provider has received a license from the commission in good standing;

(b) Wagering on that same type of live racing is lawful in the jurisdiction which is the person's principal residence; and

(c) The authorized advance deposit wagering service provider complies with the provisions of the Interstate Horseracing Act, 15 U.S.C. §§ 3001 to 3007, and the laws of the jurisdiction, which is the principal place of residence of the applicant.

(7) The authorized advance deposit wagering service provider shall provide a bond or irrevocable letter of credit in an amount set by the commission for the purpose of ensuring that payments to the commission and to Washington account holders are made. In the alternative, a service provider may provide other means of assurance of such payment including, but not limited to, evidence of bond(s), irrevocable letter(s) of credit or other forms of financial guarantees posted and in good standing with regulatory authorities in other jurisdictions, which shall be subject to the approval of the commission. Any bond, letter of credit or other assurance of payment acceptable to the commission provided by the service provider shall run to the Washington horse racing commission as obligee, and shall be for the benefit of the commission and any account holder who suffers a loss by reason of the service provider's violation of chapter 67.16 RCW or these rules. The bond, letter of credit or other assurance of payment shall be conditioned on the obligor as licensee faithfully complying with chapter 67.16 RCW and these rules. The bond shall be continuous and may be canceled by the surety only upon the surety giving written notice to the executive secretary of its intent to cancel the bond. The notice of cancellation shall be effective no sooner than thirty days after the notice is received by the executive secretary. In the event of cancellation of the bond, letter of credit or other assurance of payment the service provider shall file a new bond, letter of credit or other assurance of payment prior to the effective date of the cancellation notice.

(8) Persons whose primary residence is within Washington shall not participate in advance deposit wagering unless such activity is conducted through an authorized advance deposit wagering service provider.

(9) The content and frequency of reports from an authorized advance deposit wagering service provider shall be at the discretion of the commission.

(10) No class 1 racing association shall enter into a written agreement under this section that is in violation of, or may be construed as waiving any provision of chapter 67.16 RCW, Title 260 WAC or any applicable federal, state or local law.

(11) Every class 1 racing association approved under this chapter shall file with the commission a monthly statement showing amounts contributed to and balances in the purse fund and the breeders awards fund. This statement shall be filed with the commission no later than twenty-five days after the end of each month.

(12) In determining whether to approve an application under this chapter, the commission shall consider the following factors:

(a) The impacts on all entities conducting business as part of the Washington horse racing industry;

(b) Whether the commission deems the state compliance and monitoring efforts of the state where the authorized advance deposit wagering service provider is located are sufficient for compliance with applicable laws and for the protection of the public and to ensure the integrity of all operations and financial transactions under the agreement between the class 1 racing association and the authorized advance deposit wagering service provider; and

(c) Any other factor the commission identifies on the record as relevant to its determination.

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-030 Advance deposit wagering service provider license for a class 1 racing association. (1) A class 1 racing association licensed under chapters 67.16 RCW and ((chapter)) 260-13 WAC may apply for a license from the commission to operate as an advance deposit wagering service provider in accordance with chapter 67.16 RCW and this chapter.

(2) An application to operate as an advance deposit wagering service provider must address the requirements of this chapter, and the class 1 racing association shall file with the commission an original and five copies of the application and plan of operation.

(3) As part of the application, the class 1 racing association shall submit a detailed plan of how its proposed advance deposit wagering service provider would operate. At a minimum, the operating plan shall address the following issues:

(a) The manner in which the proposed simulcasting and advance deposit wagering service provider will operate and the regular hours of operation;

(b) Programs for responsible wagering;

(c) A plan for verification of an applicant's identity, age and residence when establishing an account;

(d) Establish a dispute resolution process for account holders who file a claim against the advance deposit wagering service provider;

(e) The requirements for accounts established and operated for persons whose principal residence is outside of the state of Washington;

(f) The process for an account holder to make withdrawals from the account holder's account;

(g) The process for handling wagers when wagering pools cannot be merged with the wagering pools of the race track where the race is being run live; and

(h) Any additional information required by the commission.

(4) The commission may require changes in a proposed plan of operations as a condition of granting a license.

(5) The commission may conduct investigations or inspections or request additional information from the class 1 racing association, as it deems appropriate in determining whether to license the class 1 racing association to operate as an advance deposit wagering service provider.

(6) A license authorizes ((only)) the class 1 racing association to establish, manage and operate an advance deposit

wagering service provider. The class 1 racing association shall not subcontract operation of the advance deposit wagering service provider to another person or entity without authorization from the commission. The class 1 racing association shall assume liability in respect to Washington accounts for any subcontractor authorized by the commission.

(7) Approval of a license under this section shall be for twelve months from the date of approval, unless rescinded by the commission.

(8) No subsequent changes in the advance deposit wagering service provider's plan of operations may occur unless ordered by the commission or until written approval is obtained from the commission.

(9) The commission, or its staff, shall be given access to review and audit all records and financial information of a class 1 racing association related to the conduct of advance deposit wagering, including resident and nonresident accounts. This information shall be made available to the commission or its staff by the class 1 racing association at its location at reasonable hours. The commission may require the class 1 racing association to annually submit to the commission audited financial statements of the advance deposit wagering service provider.

(10) The class 1 racing association, as the operator of an advance deposit wagering entity shall at least monthly, unless otherwise directed by the commission, deposit directly to the commission's operating account six tenth of one percent of the total gross handle from Washington residents.

(a) The commission shall distribute twenty-five percent of the six tenth of one percent deposit to the Washington bred owners' bonus fund and breeders award account.

(b) The association shall contribute an amount equal to the commission's distribution of the twenty-five percent of the six tenth of one percent into the Washington bred owners' bonus fund and breeders awards prior to the yearly distribution of the awards.

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-080 Distribution of source market fee

—More than one class 1 racing association. (1) The source market fee generated from wagers on a class 1 racing association's live races will be distributed to the class 1 racing association conducting that meet after deducting contributions to the commission, one percent owners bonus, breeders awards, and class C purse fund per WAC 260-49-070. The remaining source market fee from the class 1 racing association's live meet shall be distributed in accordance with the agreement between the class 1 racing association and the recognized horsemen's association.

(2) The source market fee generated from races conducted outside Washington shall be allocated proportionate to the gross amount of all sources of parimutuel wagering during each twelve-month period derived from the associations' live race meets after deducting contributions to the commission, one percent owners' bonus, and breeders awards(, and class C purse fund per WAC 260-49-070). The remaining proportional share of the source market fee from

races conducted outside Washington shall be distributed in accordance with the agreement between the class 1 racing association and the recognized horsemen's association. "All sources of parimutuel wagering" shall mean the total of in-state and out-of-state wagering on the associations' live race meet. This percentage must be calculated annually. The commission shall calculate the proportion of the source market fee for each class 1 racing association based upon the preceding calendar year. The commission shall inform the authorized advance deposit wagering service provider(s) of the percentage of source market fee to be distributed to each class 1 racing association. The authorized advance deposit wagering service provider(s) shall distribute the source market fee to the class 1 racing associations according to the percentages established by the commission.

(3) A class 1 racing association is not entitled to source market fees until it has completed one race meet in accordance with the requirements of RCW 67.16.200.

(4) A class 1 racing association must complete a live race meet in accordance with RCW 67.16.200 within each succeeding twelve-month period to maintain eligibility to continue participating in advance deposit wagering and to receive a proportionate share of the source market fee.

WSR 16-14-101 PROPOSED RULES DEPARTMENT OF EARLY LEARNING

[Filed July 5, 2016, 3:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-046.

Title of Rule and Other Identifying Information: Adding WAC 170-290-0022 Eligibility resources and 170-290-3558 Resources; and amending WAC 170-290-0003 Definitions, 170-290-0005 Eligibility, 170-290-0012 Verifying consumers' information, 170-290-0014 Verifying information for a provider's payment, 170-290-0020 Eligibility—Special circumstances, 170-290-0031 Notification of changes, 170-290-0032 Failure to report changes, 170-290-0034 Providers' responsibilities, 170-290-0035 DSHS's responsibilities to consumers, 170-290-0050 Additional requirements for self-employed WCCC consumers, 170-290-0055 Receipt of benefits when not engaged in approved activities, 170-290-0082 Eligibility period, 170-290-0085 Change in copayment, 170-290-0090 Minimum copayment, 170-290-0095 When WCCC benefits start, 170-290-0109 Reapplication, 170-290-0110 Termination of and redetermining eligibility for benefits, 170-290-0125 Eligible child care providers, 170-290-0130 In-home/relative providers—Eligibility, 170-290-0138 In-home/relative providers—Responsibilities, 170-290-0190 WCCC authorized and additional payments—Determining units of care, 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 170-290-0205 Daily child care rates—Licensed or certified family home child care providers, 170-290-0210 Tiered reimbursement, 170-290-0240 Child care subsidy

rates—In-home/relative providers, 170-290-0271 Payment discrepancies—Consumer overpayments, 170-290-3520 Eligibility, 170-290-3550 Eligibility—Special circumstances for two-parent families, 170-290-3555 Eligibility—Approved activities, 170-290-3565 Consumers' responsibilities, 170-290-3570 Notification of changes, 170-290-3580 Failure to report changes, 170-290-3590 DSHS's responsibilities to consumers, 170-290-3640 Determining income eligibility and copayment, 170-290-3650 Change in copayment, 170-290-3660 Eligibility period, 170-290-3665 When SCC program subsidies start, 170-290-3720 Notice of payment changes, 170-290-3750 Eligible child care providers, 170-290-3770 Authorized SCC payments, 170-290-3790 When additional SCC subsidy payments are authorized, 170-290-3840 New eligibility period, and 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies.

Hearing Location(s): Spokane Public Library, Downtown Branch, Room 1A, 906 West Main Avenue, Spokane, WA 99201, on August 9, 2016, at 6:00 p.m.; and at the Department of Early Learning (DEL), State Office, Room 113, 1110 Jefferson Street S.E., Olympia, WA 98501, on August 10, 2016, at 3:30 p.m.

Date of Intended Adoption: Not earlier than August 10, 2016.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by August 10, 2016.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by July 28, 2016, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement the Early Start Act of 2015 by establishing twelve month eligibility with limited reporting requirements in the working connections child care (WCCC) and seasonal child care (SCC) programs. The rule revisions also make previously existing rules compatible with the legislation and require new and existing WCCC and SCC providers to participate in early achievers and demonstrate quality within statutory time frames in order to be eligible to receive subsidy payments. The rule making implements the WCCC and SCC base rate increases negotiated in the state's collective bargaining agreement with SEIU 925, and it implements a graduated phase out of families receiving WCCC and SCC benefits when their income exceeds program limits within a specified window of time as required by Reauthorization of the Child Care Development Block Grant Act. The revisions align with statutory changes made to RCW 43.215.135 and 43.215.1352 by the Early Start Act.

Reasons Supporting Proposal: The Early Start Act amended RCW 43.215.135 and 43.215.1352. Those statutory amendments require the rule revisions for consistency. Other rule changes are the result of the state's collective bargaining agreement with SEIU 925 or as required by the Child Care Development Block Grant Act. Establishing twelve month eligibility, new subsidy payment eligibility requirements for existing and new child care providers, implementing tiered reimbursement for early achievers program participants in the WCCC program and establishing the copayment fee by rule are addressed in RCW 43.215.135. Notifying DSHS of

any change in providers within five days is addressed in RCW 43.215.1352.

Statutory Authority for Adoption: RCW 43.215.070; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

June 30, 2016

Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Authorization" means the transaction created by DSHS which allows the provider the ability to claim ((a)) payment ((for child care provided during a family's approved activities)) during ((the current)) a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

"Benefit" means a regular payment made by a government agency to a person qualified to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person receiving:

- (a) WCCC benefits as described in part II of this chapter; or
- (b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care, whether provided under a voucher or contract, each month.

"Days" means calendar days unless otherwise specified.

"DEL" means the department of early learning.

"DHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by DSHS, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"In-home/relative provider" or **"license-exempt provider,"** referred to in the collective bargaining agreement as **"family, friends and neighbors provider"** or **"FFN provider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"New child care provider" means a licensed or certified provider who did not receive a state subsidy payment between July 1, 2015, and June 30, 2016.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Phase out period" means a three-month eligibility period a consumer may be eligible for at reapplication when the consumer's household income is greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this

chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child ((not less than)) who is between five years of age through twelve years of age and who is attending ((kindergarten or elementary school)) public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

"Self-employment" means engaging in any legal income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits but funding is not available.

"WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining subsidy for child care ((subsidies for approvable activities outside the consumer's home)).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0005 Eligibility. (1) At application and reapplication, to be eligible for WCCC, the ((person applying for benefits)) applicant or reapplicant must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Nephew or niece;

(vi) Aunt;

(vii) Uncle;

(viii) Grandparent;

(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than ((two hundred percent of the FPG;

((g)) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

((h))) eighty-five percent of the state median income or if resources exceed one million dollars;

((g)) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

((i))) (h) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) Live in Washington state, and be:

(i) Less than thirteen years of age; or

(ii) Less than nineteen years of age, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must provide all required information to DSHS to determine eligibility when the consumer initially applies or reapplies for benefits.

((2)) (A consumer must provide verification to DSHS to determine continued eligibility for benefits when there is a change of circumstances under WAC 170-290-0031 during the eligibility period.)

((3))) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

((4))) (3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

((5))) (4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) A current WorkFirst individual responsibility plan (IRP) for consumers receiving TANF;

(b) Employer name, address, and phone number;

(c) State business registration and license, if self-employed;

(d) Hourly wage or salary;

(e) Either the:

(i) Gross income for the last three months;

((ii) Self-attestation of anticipated wages for new employment and third-party verification of the wages within sixty days of the date DSHS approved the consumer's application or reapplication for WCCC benefits;

((iii))) (iv) Federal income tax return for the preceding calendar year; or

((iv))) (iv) DSHS employment verification form;

(f) Monthly unearned income the household receives, such as supplemental security income (SSI) benefits or child support. Child support payment amounts are verified as follows:

(i) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order;

(ii) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(iii) For applicants or consumers who have an informal verbal or written child support agreement, the amount as verified by the written agreement signed by the noncustodial parent (NCP);

((iv) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP.

(g) If the other parent is in the household, the same information for them;

(h) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

((6))) (5) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

((7))) (6) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

((8))) (7) If a consumer does not provide all of the verification requested within thirty days from the application date, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0014 Verifying information for a provider's payment. (1) A consumer must provide all required information ((to DSHS to determine eligibility)) for payment to be authorized to their provider.

(2) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

- (b) Be from a reliable source; and
- (c) Be accurate, complete, and consistent.

(3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) Name and phone number of the licensed child care provider; and

(b) For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed provider's valid Social Security card; ((and))

(iv) All other information required by WAC 170-290-0135;

(c) Self-attestation of work, school or training schedule when the consumer requests child care for non-TANF activities. An authorization based on a self-attested schedule is subject to change if DSHS subsequently receives more accurate, complete, or consistent third-party information.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0020 Eligibility—Special circumstances. (1) ((Child care provided at the consumer's place of work.)) At application, reapplication and change reporting:

(a) A consumer is not eligible for WCCC benefits for the consumer's children when child care is provided at the same location where the consumer works.

(b) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for approved activities without the spouse or live-in partner's availability to provide care being considered unless the spouse or live-in partner is also named on the permanent custody order.

(i) Eligibility for WCCC benefits is based on:

(A) The consumer's work or approved activities schedule;

(B) The child's need for care;

(C) The child's income eligibility; and

(D) Family size based on number of children under guardianship and needing care.

(ii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(c) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in

the absence of the child's legal guardian or biological, adoptive or stepparents.

(i) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she:

(A) Has a written, signed agreement between the parent and the caregiver assuming custodial responsibility; or

(B) Receives a TANF grant on behalf of the eligible child.

(ii) Eligibility for WCCC benefits is based on:

(A) The consumer's work schedule;

(B) The child's need for care;

(C) The child's income eligibility; and

(D) Family size based on number of children under in loco parentis and needing care.

(iii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(2) ((Consumer's child care employment.)) At application and reapplication:

(a) A consumer may be eligible for WCCC benefits while working in a child care center if the consumer does not provide direct care in the same classroom to the consumer's children during work hours.

(b) A consumer is not eligible for WCCC benefits while working in a family home child care where the consumer's children are also receiving subsidized child care.

(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

((A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(3) Two parent family.

((b))) (e) A consumer may be eligible for WCCC if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.

((b))) (e) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from an acceptable medical source (see WAC 388-449-0010) that states the:

(i) Reason the parent is not able to care for the children;

(ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

((4) Single parent family.)) (f) A consumer is not eligible for WCCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

((5) Legal guardians.

(a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for approved activities without the spouse or live-in partner's availability to provide care being

~~considered unless the spouse or live in partner is also named on the permanent custody order.~~

(b) Eligibility for WCCC benefits is based on the consumer's:

- (i) Work or approved activities schedule;
- (ii) The child's need for care;
- (iii) The child's income eligibility; and
- (iv) Family size based on number of children under guardianship and needing care.

(e) The consumer's spouse or live in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(6) In loco parentis custodians.

(a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step parents.

(b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:

- (i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or
- (ii) Receives a TANF grant on behalf of the eligible child.

(e) Eligibility for WCCC benefits is based on the consumer's:

- (i) Work schedule;
- (ii) The child's need for care;
- (iii) The child's income eligibility; and
- (iv) Family size based on number of children under in loco parentis and needing care.

(d) The consumer's spouse or live in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(7) WorkFirst sanction.

(a) (3) A consumer may be eligible for WCCC if the consumer is participating in an approved activity needed to remove a sanction penalty or to reopen the consumer's WorkFirst case.

((b) A WorkFirst participant who loses a TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.) (4) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005:

- (a) The consumer's eligibility period may continue; and
- (b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.

NEW SECTION

WAC 170-290-0022 Eligibility—Resources. (1) Effective October 1, 2016, to be eligible for WCCC, the consumer applying or receiving benefits must have countable

resources less than one million dollars. The resources count if:

- (a) The consumer has control over the resource;
- (b) The consumer could legally sell the resource or convert it into cash;
- (c) The resource belongs to the consumer or dependents that are part of the household and applying for or receiving WCCC.

(2) Resources that count include both liquid and nonliquid resources:

(a) Liquid resources easily convert into cash. Some examples of liquid resources include:

- (i) Value of all bank accounts;
- (ii) Cash on hand;
- (iii) Money market accounts, IRAs, certificate of deposits (CDs), stocks, bonds, annuities, mutual funds less early withdrawal penalties including taxes;
- (iv) Available trust accounts;

(v) If a consumer owns a resource with someone not part of his or her household, we count the portion of the resource that the consumer owns.

(b) Nonliquid resources do not easily convert to cash. Some examples of nonliquid resources include:

(i) Value of any additional vehicles not excluded. Vehicle value determined by applying WAC 388-470-0075;

(ii) A house the consumer does not live in or intend to return to;

(iii) Property the consumer does not live on.

(3) Excluded resources include:

- (a) Legal guardians resources;
- (b) In loco parentis custodians resources;
- (c) Resources with a legal barrier, which include:
 - (i) Resources tied up in a divorce proceeding;
 - (ii) Jointly owned resources that the consumer has no clear access to obtain the resource;
 - (iii) If the consumer cannot overcome the barrier to obtain the resource;
 - (iv) The consumer must petition the courts for access of the resource;
 - (v) Making the resource available would place the consumer at risk of harm.

(d) For a one-parent household, one vehicle, defined as a motorized device the consumer can use as a regular means of transportation. For a two-parent household, two vehicles, defined as a motorized device the consumers can use as a regular means of transportation;

(e) One home and the surrounding property the consumer and consumer's dependents live in;

(f) Personal effects;

(g) Household goods;

(h) Life insurance policies, including a policy with cash surrender value;

(i) Federal law resources;

(i) Child nutrition act for Women, Infants, and Children (WIC) including day care and school lunch programs (P.L. 89-642);

(ii) Reimbursement from the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646);

- (iii) Payments from the Domestic Volunteer Services Act of 1973 (P.L. 93-113);
 - (iv) Disaster or emergency payments under the Disaster Relief Act of 1974 (P.L. 93-288) from:
 - (A) Federal Emergency Management Agency (FEMA);
 - (B) States or local governments; or
 - (C) Disaster assistance organizations.
 - (v) Disaster assistance payments to farmers under the Disaster Relief Act of 1974 (P.L. 93-288 as amended by 100-387);
 - (vi) Home energy assistance payments under the Low-Income Home Energy Assistance Act (P.L. 99-425);
 - (vii) Housing and Urban Development (HUD) community development block grant funds;
 - (viii) Title IV financial assistance other than room, board, and dependent care provided by the Higher Education Act (P.L. 99-498 as amended by 100-50);
 - (ix) Restitution payments under the Civil Liberties Act of 1988 to certain Asian Americans and Aleuts interned during World War II (P.L. 100-383);
 - (x) Yearly disability payments to veterans or lump sum payments to survivors of a deceased veteran retroactive to January 1, 1989, from the Agent Orange Settlement Fund (P.L. 101-201). These are different funds than those from the Agent Orange Act of 1991, which are not excluded (P.L. 102-4);
 - (xi) Payments received by an injured person, the surviving spouse, children, grandchildren, or grandparents under the Radiation Exposure Compensation Act (P.L. 101-426);
 - (xii) Payments to victims of Nazi persecution (P.L. 103-286); and
 - (xiii) Payments to crime victims from a federal or federally funded state or local program including Washington state crime victims compensation program (P.L. 103-322, section 23022).
- (j) Native American resources:
- (i) II compensation including cash, stock, partnership interest, land, and interest in land under the Alaska Native Claims Settlement Act (P.L. 92-203 & 100-241);
 - (ii) Funds held in trust, restricted lands and the first two thousand dollars of each per capita judgment award (P.L. 93-134 as amended by 97-458, 98-64 & 103-66);
 - (iii) Relocation assistance payments to members of the Navajo and Hopi tribes (P.L. 93-531, section 22);
 - (iv) Payments to certain Indian tribal members, regarding submarginal land held in trust by the U.S. (P.L. 94-114). Call state office for a list of affected tribes;
 - (v) Funds distributed per capita or held in trust under the Sac and Fox Indian Claims Agreement (P.L. 94-189);
 - (vi) Payments from the disposition of funds to the Grand River Band of Ottawa Indians (P.L. 94-540);
 - (vii) Payments to the Confederate Tribe of the Yakama Indian Nation and the Apache Tribe from the Indian Claims Commission (P.L. 95-433);
 - (viii) Payments under the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420);
 - (ix) Payments and certain funds held in trust for Chippewa Indians (P.L. 97-403, 98-102, 99-146, 99-264, 99-346, & 99-377);

- (x) Payments under the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41) as follows:
 - (A) Annuity fund established by P.L. 101-41 made to a Puyallup Tribal member upon reaching age twenty-one; and
 - (B) Payments made to a Puyallup tribe member from the trust fund established by P.L. 101-41;
- (xi) Payments to the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436) including:
 - (A) Real or personal property purchased directly with such funds; and
 - (B) Appreciation in value of the initial investment.
- (xii) Payments to the Blackfeet, Gros Ventre, and Assiniboine tribes, Montana; and the Papag, Arizona (P.L. 97-408 & 98-124);
- (xiii) Per capita shares to heirs of two thousand dollars or less under the Old Age Assistance Claims Settlement Act (P.L. 98-500);
- (xiv) Financial assistance provided by the Bureau of Indian Affairs under the Higher Education Act (P.L. 99-498 as amended by 100-50);
- (xv) Loans provided under the Tribal Development Student Assistance Revolving Loan Program of the Higher Education Act (P.L. 99-498 as amended by 102-325). These payments are counted for SSI-related medical; and
- (xvi) Payments under the Seneca Nation Settlement Act (P.L. 101-503).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0031 Notification of changes. (1) When a consumer applies for or receives WCCC benefits, he or she must:

- ((1)) Notify DSHS, within five days, of any change in providers;
- ((2))) (a) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider;
- ((b) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age or older who lives with the provider when care occurs outside of the child's home;
- ((c) Notify DSHS, within five days, of any change in providers;
- ((d) Notify DSHS, within ten days, of changes of the address and telephone number of the consumer's in-home/relative provider;
- ((e) Notify DSHS, within ten days, when the consumer's countable income increases and exceeds eighty-five percent of state median income as provided in WAC 170-290-0005;
- ((f) Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-0005;
- ((g) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization; and
- ((3))) (h) Notify DSHS, within ten days, when the consumer's home address or telephone number changes.

(2) When a consumer receives WCCC benefits, he or she may notify DSHS ((within ten days of any significant change related to the consumer's copayment or eligibility, including)) when:

(a) The number of child care hours the consumer needs ((more or less hours)) increases;

(b) ((The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;)) The household income changes, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The ((consumer's)) household size ((such as any family member moving in or out of the home);

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of the consumer's in-home/relative provider;

(f) The consumer's home address and telephone number, and

(g)) increases, which may lower the copayment; or

(d) The consumer's legal obligation to pay child support((;

(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about the consumer's in-home/relative provider; and

(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home)) increases, which may lower the copayment.

(3) Effective dates of changes are as follows:

(a) Copayment changes are effective as provided in WAC 170-290-0085;

(b) Changes under subsection (1)(c) and (d) of this section are effective:

(i) The date of change, if reported within five days; or

(ii) The date the change was reported, if not reported within five days.

(c) Changes to consumer information described in WAC 170-290-0012 are effective:

(i) The date the change was reported, if reported within ten days from the date of change or if received within ten days from the date of request for verification; or

(ii) The date verification is received, if verification is not received within ten days from the date the change is reported or if not received within ten days from the request of verification.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0032 Failure to report changes. (1) A consumer's failure to report changes as required in WAC 170-290-0031 within the stated time frames may cause:

((1))) (a) A copayment error. The consumer may be required to pay a higher copayment as stated in WAC 170-290-0085; or

((2))) (b) A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publications "Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers," "Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers" and "Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers").

(2) If a consumer receives an overpayment for failure to report changes or failure to provide required verification, they will be required to repay any overpayment as provided in WAC 170-29-0271.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Comply with:

(a) All of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or

(b) All of the requirements in WAC 170-290-0130 through 170-290-0167, 170-290-0250, and 170-290-0268, for child care providers who provide in-home/relative care;

(2) Report pending charges or convictions to DSHS as provided in:

(a) Chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or

(b) WAC 170-290-0138 (2) and (3), for child care providers who provide in-home/relative care;

(3) Keep complete and accurate daily attendance records for children in their care, and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DEL.

(b) Attendance records older than twelve months to five years must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170-290-0268;

(4) Keep receipts for billed field trip/quality enhancement fees as follows:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DEL;

(b) Receipts from one to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department;

(5) Allow consumers access to their child at all times while the child is in care;

(6) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;

(7) Follow billing procedures:

(a) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*"; or

(b) As described in the most current version of "*Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers*"; or

(c) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*".

(8) Not claim a payment in any month((:

((a)) a child has not attended at least one day within the authorization period in that month((; and

((b)) The day attended is within the authorization period)).

(9) Invoice the state no later than one calendar year after the actual date of service;

(10) For both licensed and certified providers and in-home/relative providers, not charge subsidized families the difference between the provider's customary rate and the maximum allowed state rate; and

(11) For licensed and certified providers, not charge subsidized families for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Absent days on days in which the child is scheduled to attend and authorized for care;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0035 DSHS's responsibilities to consumers. DSHS is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC 170-290-0095). Under WAC 170-290-0012 (5)(e)(ii), a determination made within thirty days of application using self-attestation of new employment wages is compliant with this subsection even if third-party verification is provided more than thirty days after the date of application;

(3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC 170-290-0125;

(4) Review a consumer's chosen in-home/relative provider's background check results;

(5) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;

(6) ((Only)) Authorize payment when no adult in a consumer's family (under WAC 170-290-0015) is able or available (under WAC 170-290-0003) to care for the consumer's children at application and reapplication;

(7) Inform a consumer of:

(a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers DSHS can pay;

(c) The community resources that can help a consumer select child care when needed; and

(d) Any change in a consumer's copayment during the authorization period except under WAC 170-290-0120(5).

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(9) Provide prompt child care payments to a consumer's child care provider;

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer;

(11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified; and

(12) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0050 Additional requirements for self-employed WCCC consumers. (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from the consumer's trade or business, not from wages paid by an employer;

(b) Be responsible to pay the consumer's self-employment Social Security and federal withholding taxes;

(c) Have a work schedule, activities or services that are not controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income; and

(e) At application and reapplication, work outside of the home ((during)) the amount of hours for which the consumer requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits.

(2) **Self-employed consumers receiving TANF.** If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in the consumer's approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(3) **Self-employed consumers not receiving TANF.** If a consumer does not receive TANF and requests WCCC benefits for the consumer's self-employment, the consumer may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) A consumer who does not receive TANF cash assistance and requests WCCC benefits for self-employment must provide DSHS with the consumer's:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation and the location of work activity;

(iv) Profit and loss statement, projected profit and loss statement if starting a new business; and

(v) Either federal self-employment tax reporting forms for the most current reporting year or DSHS self-employment income and expense declaration form.

(b) ((During)) At application and reapplication, the first six consecutive months of starting a new self-employment business, the number of hours ((of care the)) a consumer is eligible to receive is based on the consumer's report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive this provision only once during the consumer's lifetime and must use the benefit provided by this provision within the consumer's authorization period.

(c) At application and reapplication, DSHS determines ((a consumer's need for care)) the number of care hours the consumer is eligible to receive after receiving WCCC self-employment benefits for six consecutive months as provided in (b) of this subsection by:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage, whichever is lower, to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional ((child care needs for other)) approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must report the parent's own self-employment earnings and self-employment plan. If the requested verification is not provided, then WAC 170-290-0012 applies to determining eligibility.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0055 Receipt of benefits ((when not engaged in approved activities)) during fourteen-day wait period. (1) **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) ((Twenty eight day gap period. DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty eight consecutive days when a consumer experiences a gap in employment or approved activity. The consumer may be eligible for this twenty eight day gap period:))

(a) Twice in a calendar year; and

(b) For the same number of units open while the consumer is in the approved activity not to exceed full-time care.

(3) The twenty eight day gap period must be used within the consumer's current eligibility period and is not an approved activity for the purpose of determining eligibility.

(4) In order for a consumer to qualify for the twenty eight day gap period:

(a) The consumer must be currently receiving WCCC benefits;

(b) The consumer must report to DSHS within ten days the loss of employment or approved activity; and

(c) The consumer must:

(i) Be looking for another job; or

(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty eight day gap period.

(5) A consumer is eligible for the minimum copayment during the fourteen day wait period or twenty eight day gap period.

((6))) If the consumer does not enter the fourteen-day wait period activity, DSHS will terminate the consumer's case, as provided in WAC 170-290-0110.

(3) In the situation described in subsection (1) of this section, the child needs to attend at least one day in the calendar month for the provider to bill.

(4) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0082 Eligibility period. (1) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for twelve months. The twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1).

(2) Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

((2))) (3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

- (4) The twelve-month eligibility period begins:
 (a) When the benefits begin under WAC 170-290-0095;

or

- (b) Upon reapplication under WAC 170-290-0109.

(5) A consumer's eligibility may be for less than twelve months if:

- (a) Requested by the consumer; or
 (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.
~~((3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve month eligibility period.~~
 (4) The twelve month eligibility period begins:
 (a) When benefits begin under WAC 170-290-0095; or
 (b) Upon reapplication under WAC 170-290-0109(4).)

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0085 Change in copayment. (1) A consumer's copayment may change when:

- (a) The consumer's monthly income decreases;
 (b) The consumer's family size increases and causes the copayment to decrease;
 (c) DSHS makes an error in the consumer's copayment computation;
 (d) The consumer did not report all income, activity and household information at the time of application, reapplication, or when reporting a change in circumstances;
 (e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;
 (f) DEL makes a mass change in benefits due to a change in law or program funding; or
 (g) The consumer is approved for a new eligibility period~~(; or~~

~~(h) The consumer is approved for the fourteen day wait period or twenty-eight day gap period as provided in WAC 170-290-0055).~~

(2) Copayment changes are effective on the first day of the month immediately following the date the copayment change was made.

(3) DSHS does not increase a consumer's copayment during the current eligibility period when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005~~(, and:~~

- ~~(a) The consumer's monthly countable income increases;~~

or

- ~~(b) The consumer's family size decreases).~~

- (4) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0090 Minimum copayment. (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) **First application.** The consumer pays the minimum copayment at first application for WCCC when benefits are paid. The consumer pays the minimum copayment:

(a) Beginning in the month that DSHS pays for WCCC child care services~~(;); and~~

- (b) The first full calendar month thereafter.

(3) **Reapplication.** The consumer pays the minimum copayment at reapplication for WCCC after a break of at least thirty days in the consumer's approved activities. The consumer pays the minimum copayment:

(a) Beginning in the month that DSHS pays for WCCC services~~(;); and~~

- (b) The first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

- (a) Receives TANF; or

(b) Is part of the parent's or relative's TANF assistance unit.

~~((Two parent families automatically qualify for the minimum copayment during a twenty-eight day gap period in WAC 170-290-0055 only if both parents meet the gap requirements. Otherwise, eligibility workers must determine the change in copayment based on the family's countable income and family size, as specified in WAC 170-290-0065 and 170-290-0085.~~

- ~~(6)) DSHS does not prorate the copayment.~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0095 When WCCC benefits start. (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application for WCCC benefits, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055; and

(c) The consumer needs child care for approved activities within at least thirty days of the date of application for WCCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication.

(3) The consumer's application date is whichever of the following is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0109 Reapplication. (1) If a consumer wants to receive uninterrupted child care benefits for another eligibility period, the consumer must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called Income Phase-Out. In determining eligibility for the Income Phase-Out period, the following rules apply:

(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;

(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(c) There is no break between the twelve-month eligibility period and the Income Phase-Out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month Income Phase-Out period; and

(g) The consumer will not be eligible for a second, back-to-back Income Phase-Out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month Income Phase-Out period.

(4) If DSHS determines that a consumer is eligible for WCCC benefits based on reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

((4))) (5) When a consumer submits a reapplication after the last day of the current eligibility period, the consumer's benefits begin:

(a) On the date that the consumer's reapplication is date-stamped as received in DSHS's community service office or entered into the DSHS automated system, whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is being cared for by an eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0110 Termination of and redetermining eligibility for benefits. (1) DSHS stops a consumer's eligibility for WCCC benefits when the consumer does not:

((The consumer's monthly copayment is higher than the state maximum monthly rate, including special needs payment, but not including registration, field trip and non-standard hours bonus payments, for all of the consumer's children in care under WAC 170-290-0005; or

(b) The consumer does not:

((i))) Comply with the copayment requirements of WAC 170-290-0030 (3) and (4);

((ii))) (b) Complete the requested application or reapplication before the deadline noted in WAC 170-290-0109 (2)(a);

((iii)) Meet other WCCC eligibility requirements related to family size, income and approved activities; or

((iv))) (c) Enter the approved activity at the end of the fourteen-day wait period;

(d) Complete the WorkFirst orientation process when approved for TANF;

(e) Return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012; or

(f) Cooperate with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

(2) A consumer may be eligible for WCCC again beginning on the date that the consumer:

(a) Meets all WCCC eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-0030 (3) and (4); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0125 Eligible child care providers. To receive payment under the WCCC program, a consumer's child care provider must be:

(1) An in-home/relative provider. Providers other than those specified in subsection (2) of this section must meet the requirements in WAC 170-290-0130; or

(2) A licensed, certified, or DEL-contracted provider.

(a) Licensed providers must:

(i) Be currently licensed as required by chapter 43.215 RCW and as described by chapters 170-295, 170-296A, or 170-297 WAC; or

(ii) Meet the provider's state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states:

(A) The provider's private pay rate for that child; or

(B) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

(b) Certified providers are exempt from licensing but certified by DEL, such as:

(i) Tribal child care facilities that meet the requirements of tribal law;

(ii) Child care facilities on a military installation; and

(iii) Child care facilities operated on public school property by a school district.

(c) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(i) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care.

(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(ii) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;

(iii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(iv) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for non-school age child care; and

(v) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(d) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(i) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose

eligibility to receive state subsidy payments for nonschool age child care;

(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(iv) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(v) Maintain an up-to-date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(e) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

(f) DEL-contracted seasonal day camps ((has)) have a contract with DEL to provide subsidized child care.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0130 In-home/relative providers— Eligibility.

(1) To be eligible as an in-home/relative provider to care for children under WCCC, the applicant must be:

(a) Eighteen years of age or older;

(b) A citizen or legal resident of the U.S.; and

(c) Meet all of the requirements listed in WAC 170-290-0135.

(2) Additionally, eligible in-home/relative providers must:

(a) Meet all applicable background check requirements in part II of this chapter;

(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and

(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS and used by the parent ((for approved activities)).

(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:

- (a) Adult siblings that live outside the child's home;
- (b) Extended tribal family members;
- (c) Grandparents or great-grandparents; or
- (d) Aunts or uncles, or great-aunts or great-uncles.

(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.

(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:

- (a) The child's biological, adoptive, or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner;
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner; or
- (d) An individual who has a revoked child care license.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period plus one back-up provider, either licensed or in-home/relative, also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers must ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, unless exempt under department of health regulations.

(8) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(9) In-home/relative provider payments cannot begin prior to the receipt of all required background checks indicating no disqualifying information.

(10) WCCC consumers must be in an approved activity at application and reapplication and the requirements in WAC 170-290-0020 pertain for the in-home/relative provider to be eligible for subsidy payments.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0138 In-home/relative providers—Responsibilities. An in-home/relative provider must:

(1) Provide care, supervision, and daily activities based on the child's developmental needs;

(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;

(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;

(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, including any person sixteen years of age or older who newly resides with the pro-

vider, when the provider cares for the child in the provider's home. Background checks must be completed for these persons as provided in WAC 170-290-0143;

(5) Report a revoked child care license;

(6) Bill only for actual hours of care provided. Those hours:

(a) Must be authorized by DSHS((and);

(b) Must be used by the consumer ((for approved activities)); and

(c) Can be claimed whether or not the consumer is present during the hours of care.

(7) Bill for no more than six children at one time during the same hours of care;

(8) Track attendance documenting the days and hours of care provided and keep records for five years:

(a) If paper attendance records are used, the provider must have the consumer sign and date the attendance records at least weekly, verifying the accuracy of the dates and times.

(b) Providers may use an electronic attendance system as provided in WAC 170-290-0139 to record attendance in lieu of a paper sign-in record;

(9) Repay any overpayments under WAC 170-290-0268; and

(10) Have at least one working telephone accessible in the home for incoming and outgoing calls during all times that subsidized child care is provided. The telephone must have 911 emergency services calling access.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following:

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means the following:

(i) For licensed care or certified facilities, twenty-three full-day units if the child needs five or more hours of care per day, or thirty half-day units if the child needs fewer than five hours of care per day; and

(ii) Two hundred thirty hours for in-home/relative child care;

(e) A registration fee (under WAC 170-290-0245);

(f) A field trip fee (under WAC 170-290-0247);

(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(h) A nonstandard hours bonus under WAC 170-290-0249.

(2) Beginning September 1, 2016, and applicable to school-age children, DSHS will authorize and pay for child care as follows:

(a) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(b) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year until the following June. If the consumer's schedule has changed and more care is needed, the consumer must request an increase, and DSHS will verify the need for increased care. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025.

(3) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$((31.47)) <u>32.10</u>	\$((26.47)) <u>27.00</u>	\$((25.00)) <u>25.50</u>	\$((23.55)) <u>24.02</u>
	Half-Day	\$((15.74)) <u>16.05</u>	\$((13.24)) <u>13.50</u>	\$((12.50)) <u>12.75</u>	\$((11.78)) <u>12.01</u>
Spokane County	Full-Day	\$((32.19)) <u>32.84</u>	\$((27.07)) <u>27.62</u>	\$((25.58)) <u>26.10</u>	\$((24.09)) <u>24.58</u>
	Half-Day	\$((16.10)) <u>16.42</u>	\$((13.54)) <u>13.81</u>	\$((12.79)) <u>13.05</u>	\$((12.05)) <u>12.29</u>
Region 2	Full-Day	\$((31.79)) <u>32.44</u>	\$((26.53)) <u>27.06</u>	\$((24.61)) <u>25.10</u>	\$((21.76)) <u>22.20</u>
	Half-Day	\$((15.90)) <u>16.22</u>	\$((13.27)) <u>13.53</u>	\$((12.31)) <u>12.55</u>	\$((10.88)) <u>11.10</u>
Region 3	Full-Day	\$((42.07)) <u>42.92</u>	\$((35.08)) <u>35.78</u>	\$((30.30)) <u>30.92</u>	\$((29.42)) <u>30.02</u>
	Half-Day	\$((21.04)) <u>21.46</u>	\$((17.54)) <u>17.89</u>	\$((15.15)) <u>15.46</u>	\$((14.71)) <u>15.01</u>
Region 4	Full-Day	\$((48.96)) <u>49.94</u>	\$((40.88)) <u>41.70</u>	\$((34.30)) <u>35.00</u>	\$((30.89)) <u>31.52</u>
	Half-Day	\$((24.48)) <u>24.97</u>	\$((20.44)) <u>20.85</u>	\$((17.15)) <u>17.50</u>	\$((15.45)) <u>15.76</u>
Region 5	Full-Day	\$((35.90)) <u>36.62</u>	\$((30.89)) <u>31.52</u>	\$((27.20)) <u>27.74</u>	\$((24.14)) <u>24.62</u>
	Half-Day	\$((17.95)) <u>18.31</u>	\$((15.45)) <u>15.76</u>	\$((13.60)) <u>13.87</u>	\$((12.07)) <u>12.31</u>
Region 6	Full-Day	\$((35.30)) <u>36.02</u>	\$((30.30)) <u>30.92</u>	\$((26.47)) <u>27.00</u>	\$((25.89)) <u>26.42</u>
	Half-Day	\$((17.65)) <u>18.01</u>	\$((15.15)) <u>15.46</u>	\$((13.24)) <u>13.50</u>	\$((12.95)) <u>13.21</u>

(Chart effective ((01/01/15)) 07/01/16)

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 and 170-295-0050 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

((3)) (4) DSHS authorizes overtime care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

(5) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$((31.47)) <u>32.10</u>	\$((26.47)) <u>27.00</u>	\$((25.00)) <u>25.50</u>	\$((23.55)) <u>24.02</u>
	Half-Day	\$((15.74)) <u>16.05</u>	\$((13.24)) <u>13.50</u>	\$((12.50)) <u>12.75</u>	\$((11.78)) <u>12.01</u>
Spokane County	Full-Day	\$((32.19)) <u>32.84</u>	\$((27.07)) <u>27.62</u>	\$((25.58)) <u>26.10</u>	\$((24.09)) <u>24.58</u>
	Half-Day	\$((16.10)) <u>16.42</u>	\$((13.54)) <u>13.81</u>	\$((12.79)) <u>13.05</u>	\$((12.05)) <u>12.29</u>
Region 2	Full-Day	\$((31.79)) <u>32.44</u>	\$((26.53)) <u>27.06</u>	\$((24.61)) <u>25.10</u>	\$((21.76)) <u>22.20</u>
	Half-Day	\$((15.90)) <u>16.22</u>	\$((13.27)) <u>13.53</u>	\$((12.31)) <u>12.55</u>	\$((10.88)) <u>11.10</u>
Region 3	Full-Day	\$((42.07)) <u>42.92</u>	\$((35.08)) <u>35.78</u>	\$((30.30)) <u>30.92</u>	\$((29.42)) <u>30.02</u>
	Half-Day	\$((21.04)) <u>21.46</u>	\$((17.54)) <u>17.89</u>	\$((15.15)) <u>15.46</u>	\$((14.71)) <u>15.01</u>
Region 4	Full-Day	\$((48.96)) <u>49.94</u>	\$((40.88)) <u>41.70</u>	\$((34.30)) <u>35.00</u>	\$((30.89)) <u>31.52</u>
	Half-Day	\$((24.48)) <u>24.97</u>	\$((20.44)) <u>20.85</u>	\$((17.15)) <u>17.50</u>	\$((15.45)) <u>15.76</u>
Region 5	Full-Day	\$((35.90)) <u>36.62</u>	\$((30.89)) <u>31.52</u>	\$((27.20)) <u>27.74</u>	\$((24.14)) <u>24.62</u>
	Half-Day	\$((17.95)) <u>18.31</u>	\$((15.45)) <u>15.76</u>	\$((13.60)) <u>13.87</u>	\$((12.07)) <u>12.31</u>
Region 6	Full-Day	\$((35.30)) <u>36.02</u>	\$((30.30)) <u>30.92</u>	\$((26.47)) <u>27.00</u>	\$((25.89)) <u>26.42</u>
	Half-Day	\$((17.65)) <u>18.01</u>	\$((15.15)) <u>15.46</u>	\$((13.24)) <u>13.50</u>	\$((12.95)) <u>13.21</u>

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$((26.80))	\$((26.80))	\$((23.30))	\$((23.30))	\$((20.73))
	Half-Day	<u>29.62</u> \$((13.40)) <u>14.81</u>	<u>29.62</u> \$((13.40)) <u>14.81</u>	<u>25.76</u> \$((11.65)) <u>12.88</u>	<u>23.78</u> \$((11.65)) <u>11.89</u>	<u>21.14</u> \$((10.37)) <u>10.57</u>
Spokane County	Full-Day	\$((27.40))	\$((27.40))	\$((23.83))	\$((23.83))	\$((21.18))
	Half-Day	<u>30.32</u> \$((13.70)) <u>15.16</u>	<u>30.32</u> \$((13.70)) <u>15.16</u>	<u>26.36</u> \$((11.92)) <u>13.18</u>	<u>24.32</u> \$((11.92)) <u>12.16</u>	<u>21.60</u> \$((10.59)) <u>10.80</u>
Region 2	Full-Day	\$((28.30))	\$((28.30))	\$((24.61))	\$((22.01))	\$((22.01))
	Half-Day	<u>30.66</u> \$((14.15)) <u>15.33</u>	<u>30.66</u> \$((14.15)) <u>15.33</u>	<u>26.66</u> \$((12.31)) <u>13.33</u>	<u>24.44</u> \$((11.01)) <u>12.22</u>	<u>22.46</u> \$((11.01)) <u>11.23</u>
Region 3	Full-Day	\$((37.54))	\$((37.54))	\$((32.36))	\$((28.48))	\$((25.89))
	Half-Day	<u>41.98</u> \$((18.77)) <u>20.99</u>	<u>41.98</u> \$((18.77)) <u>20.99</u>	<u>35.54</u> \$((16.18)) <u>17.77</u>	<u>35.54</u> \$((14.24)) <u>17.77</u>	<u>28.80</u> \$((12.95)) <u>14.40</u>
Region 4	Full-Day	\$((44.17))	\$((44.17))	\$((38.41))	\$((32.36))	\$((31.06))
	Half-Day	<u>53.30</u> \$((22.09)) <u>26.65</u>	<u>53.30</u> \$((22.09)) <u>26.65</u>	<u>44.42</u> \$((19.21)) <u>22.21</u>	<u>39.98</u> \$((16.18)) <u>19.99</u>	<u>31.68</u> \$((15.53)) <u>15.84</u>
Region 5	Full-Day	\$((29.78))	\$((29.78))	\$((25.89))	\$((24.61))	\$((22.01))
	Half-Day	<u>36.34</u> \$((14.89)) <u>18.17</u>	<u>36.34</u> \$((14.89)) <u>18.17</u>	<u>31.60</u> \$((12.95)) <u>15.80</u>	<u>26.66</u> \$((12.31)) <u>13.33</u>	<u>22.46</u> \$((11.01)) <u>11.23</u>
Region 6	Full-Day	\$((29.78))	\$((29.78))	\$((25.89))	\$((25.89))	\$((24.61))
	Half-Day	<u>32.68</u> \$((14.89)) <u>16.34</u>	<u>32.68</u> \$((14.89)) <u>16.34</u>	<u>28.42</u> \$((12.95)) <u>14.21</u>	<u>26.66</u> \$((12.31)) <u>13.33</u>	<u>25.10</u> \$((12.31)) <u>12.55</u>

(Chart effective ((01/01/15)) 07/01/16)

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC 170-296A-0050 and 170-296A-5625 and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

WAC 170-290-0210 Tiered reimbursement and quality improvement awards. (1) Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.

(2) Quality improvement awards, as described by chapter 43.215 RCW, are reserved for early achievers participating providers offering programs to an enrollment population consisting of at least five percent of nonschool age children receiving a state subsidy.

(a) Qualifying state subsidy programs include working connections child care (WCCC), seasonal child care (SCC), children's administration (CA) child care programs, homeless child care program (HCCP), ECLIPSE and medicare child care programs. Participants providing homeless child care program, ECLIPSE, or medicaid services must present DEL with information indicating that services were provided under these programs.

(b) Percent subsidy calculations are derived from a monthly average of the number of children receiving state subsidy divided by the monthly average licensed capacity of a specific provider over a twelve-month period.

(i) The twelve-month period utilized for the above calculation will include the twelve months prior to the formal release of a facility's early achievers rating.

(ii) Facilities must have provided care at least one day in a given month for that month to be utilized in the above calculation.

AMENDATORY SECTION (Amending WSR 14-24-070, filed 11/26/14, effective 1/1/15)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy rate of two dollars and ((forty two)) forty-seven cents per hour for the child who needs the greatest number of hours of care and two dollars and ((thirty nine)) forty-four cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0271 Payment discrepancies—Consumer overpayments. (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits when the consumer was not eligible;

(b) ((Used care for an unapproved activity or for children not in the consumer's WCCC household;)) Was determined eligible at application or reapplication based on the consumer's participation in an approved activity and used benefits while never participating in said activity;

(c) Failed to report ((information)) changes under the requirements of WAC 170-290-0031 to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider that was not eligible per WAC 170-290-0125; ((or))

(e) Received benefits for a child who was not eligible per WAC 170-290-0005, 170-290-0015 or 170-290-0020;

(f) Failed to enter their approved activity at the end of the fourteen-day wait period;

(g) Failed to have TANF approved and enter an approved WorkFirst activity; or

(h) Failed to return, by the sixtieth day, the requested income verification of new employment as provided in WAC 170-290-0012.

(2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0030 through 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3520 Eligibility. (1) ((Parents.)) To be eligible for SCC the person applying for benefits must:

(a) Not currently be receiving temporary aid for needy families (TANF);

(b) Live in one of the following Washington state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;

(c) At application and reapplication, have parental control of one or more children;

(d) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian as verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Aunt;

(vi) Uncle;

(vii) Niece or nephew;

(viii) Grandparent; or

(ix) Any of the above relatives in (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt(());

(e) At application and reapplication, participate in an approved activity under WAC 170-290-3555;

(f) Have countable income at or below the maximum eligibility limit described in WAC 170-290-0005. The consumer's eligibility shall end if the consumer's countable income is greater than eighty-five percent of the state median income or if resources exceed one million dollars;

(g) Complete the application for child care and DSHS verification process, regardless of other program benefits or services received; and

(h) Meet eligibility requirements for SCC described under part III of this chapter.

(2) **Children.** To be eligible for SCC, the child receiving SCC must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005; and

(b) Live in Washington state and be:

(i) Less than ((age)) thirteen years of age; or

(ii) Less than ((age)) nineteen years of age and:

(A) Have a verified special need according to WAC 170-290-0220; or

(B) Be under court supervision.

((3) Consumers are not eligible for SCC program subsidies if they:

(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;

(b) Are receiving TANF benefits; or

(c) Are the only parent in the household and will be away from the home for more than thirty days in a row.))

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3550 Eligibility—Special circumstances ((for two-parent families)). (1) A consumer may be eligible for the SCC program when the consumer is a parent in a two-parent family and both parents currently work in seasonally available agricultural related work.

(2) A consumer may be eligible for SCC if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is currently working or participating in approved seasonally agricultural related work.

(3) If a consumer claims one parent is not able to care for the children, the consumer must provide written documentation from an acceptable medical source (see WAC 388-449-0010) that states the:

(a) Reason the parent is not able to care for the children; and

(b) Expected duration and severity of the condition that keeps the parent from caring for the children.

(4) Single-parent family. A consumer is not eligible for SCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005:

(a) The consumer's eligibility period may continue; and

(b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3555 Eligibility—Approved activities.

(1) A consumer may be eligible for SCC program subsidies for up to sixteen hours per day for the time the consumer is involved in seasonally available agricultural related work in Washington state.

(2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section((2)).

(3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(4) The twelve-month eligibility period begins:

(a) When benefits begin under WAC 170-290-0095; or

(b) Upon reapplication under WAC 170-290-0109.

(5) DSHS may authorize care for:

(a) Travel time only between the child care location and the employment location; or

(b) ((Job search, of no more than five days per month, if the consumer's seasonally available agricultural related work ends and the consumer is still eligible and continues to need child care; or

((e))) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

NEW SECTION

WAC 170-290-3558 Resources. DSHS verifies a consumer's resource as provided in WAC 170-290-0022.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3565 Consumers' responsibilities.

(1) When a person applies for or receives SCC program subsidies, the applicant or consumer must, as a condition of receiving those subsidies:

(a) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(b) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(c) ((Leave the consumer's children with the eligible provider while the consumer is in SCC approved activities outside of the consumer's home;

((d))) Pay the provider for child care services when the consumer requests additional child care ((for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS)) outside of the current authorization;

((e))) (d) Pay the provider for optional child care programs for the child that the consumer requests. The provider

must have a written policy in place charging all families for these optional child care programs;

((#)) (e) Document their child's attendance in child care by having the consumer or other person authorized by the consumer to take the child to or from child care:

(i) If the provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(ii) Record the child's attendance using an electronic system if used by the provider;

((#)) (f) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect the consumer's benefits;

((#)) (g) Cooperate (provide the information requested) with the child care subsidy audit process.

(i) A consumer becomes ineligible for SCC benefits upon a determination of noncooperation and remains ineligible until he or she meets child care subsidy audit requirements.

(ii) The consumer may become eligible again when he or she meets SCC requirements in Part III of this chapter and cooperates.

(iii) Care can begin on or after the date the consumer cooperated and meets SCC requirements in Part III of this chapter.

((#)) (h) Ensure that their children who receive subsidized child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(i) A department of health (DOH) medical exemption form signed by a health care professional; or

(ii) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization;

((#)) (i) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider; and

((#)) (j) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late.

(2) In cases of overdue or past due copayments, the consumer, as a condition of maintaining eligibility, must do one of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a signed return receipt for correspondence not responded to, or a returned document that was not picked up.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3570 Notification of changes.

(1) When a consumer applies for or receives SCC program subsidies, the consumer must:

((#)) (a) Notify DSHS, within five days, of any change in providers;

((#)) (b) Notify DSHS, within ten days, when the consumer's countable income increases and the change would cause the consumer's countable income to exceed eighty-five percent state median income as provided in WAC 170-290-0005;

((#)) (c) Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-3558;

((#)) (d) Notify DSHS, within ten days, when the consumer's home address or telephone number changes; and

((#)) (e) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization((;

((#)) (f) Notify DSHS within ten days of any change in the consumer's:);

((#)) (g) When a consumer receives SCC benefits, he or she may notify DSHS when:

((#)) (h) The number of child care hours ((needed)) the consumer needs changes (more or less hours);

((#)) (i) ((Child's eligibility for migrant Head Start or another child care program;

((#)) (j) Household income((, including any new receipt of a TANF grant or child support increases or decreases)) decreases, which may lower the copayment;

((#)) (k) Household size such as any family member moving in or out of the consumer's home((;

((#)) (l) Employment hours such as starting, stopping or changing employers;

((#)) (m) Home address and telephone number)), which may lower the copayment; or

((#)) (n) The consumer's legal obligation to pay child support ((payments made by the consumer)) changes.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3580 Failure to report changes.

(1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-3850, the consumer may have to pay additional costs, such as a higher copayment, or DSHS may terminate benefits.

(2) If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publication "Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers" and "Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers").

((#)) (o) If a consumer receives an overpayment for failure to report changes or failure to provide required verification, they will be required to repay any overpayment as provided in WAC 170-290-0271.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3590 DSHS's responsibilities to consumers. DSHS must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Complete applications for SCC program subsidies based on information the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

(3) Accept a variety of forms of verification and may not specify the type of documentation required;

(4) Authorize payments only to a licensed or certified child care provider the consumer chooses who meets the requirements in WAC 170-290-3750;

(5) At application and reapplication, authorize payments ((only)) when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-0003;

(6) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing;

(7) Provide prompt child care authorizations to a consumer's child care provider;

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(9) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, DSHS determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620; and

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG)((; and

((d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075)).

(2) At application and reapplication, if a consumer's family's income is above the maximum eligibility limit as provided in WAC 170-290-0005, the consumer's family is not eligible for the SCC program.

(3) The FPG is updated every year. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(4) SCC shall assign a copayment amount based on the family's countable income. The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment ((when a consumer uses care for part of a month)).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3650 Change in copayment. (1) A consumer's SCC program copayment could change when:

(a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;

(b) The consumer's family size increases and causes the copayment to decrease;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of ((eligibility determination or application/reapplication)) application and reapplication; or

(e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during the eligibility period, the change is effective((:

((a))) on the first day of the month immediately following the date the copayment change((, when:

the report is made to DSHS or the information is learned by DSHS ten or more days after the change as provided in WAC 170-290-3570; and

((ii) The consumer receives ten days written notice; or

((b) On the first day of the month that the change occurred when:

((i) The report is made to DSHS or the information is learned by DSHS within ten days or less after the change as provided in WAC 170-290-3570; and

((ii) The copayment is decreasing)) was made.

(3) DSHS does not prorate ((when a consumer uses care for part of a month)) the copayment.

(4) DSHS does not increase a consumer's copayment during the current eligibility period when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3660 Eligibility period. (1) A consumer who meets all of the requirements of part III of this chapter is eligible to receive SCC subsidies for ((six)) twelve months before having to redetermine ((his or her income)) eligibility. The ((six-month)) twelve-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regard-

less of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than ((six)) twelve months if requested by the consumer.

(3) A consumer's eligibility may end sooner than ((six)) twelve months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3665 When SCC program subsidies start. (1) SCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required SCC application and verification process as described under WAC 170-290-0012 and 170-290-0014 within thirty days of the date DSHS received the consumer's application for SCC benefits, except in the case of new employment. In that case, under WAC 170-290-0012, the consumer must provide third-party verification within sixty days of application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC 170-290-3555 at application and reapplication; and

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment. In that case, under WAC 170-290-0012, the consumer must provide third-party verification within sixty days of application or reapplication.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3720 Notice of payment changes. DSHS provides SCC consumers with at least ten days written notice of changes to payments related to the ((suspension,)) reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter 43.215 RCW and 170-295, 170-296A, or 170-297 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or

(b) The state maximum child care subsidy rate for the DSHS region where the child resides; or

(3) Exempt from licensing but certified by DEL, such as:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; and

(c) Child care facilities operated on public school property by a school district.

(4) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;

(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for non-school age child care, and

(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-

295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(6) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205:

(a) A full day of child care when a consumer's children need care ((is needed)) for five to ten hours per day;

(b) A half day of child care when a consumer's children need care ((is needed)) for less than five hours per day;

(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half-day units if the child needs fewer than five hours of care per day;

(d) Beginning September 1, 2016, for school-aged children, DSHS will authorize and pay for child care as follows:

(i) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(ii) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year, until the following June. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025. If the consumer's schedule has changed and the child continues to need full-day care during the school year, the consumer must request the increase and verify the need for full-day care.

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip/quality enhancement fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3790 When additional SCC subsidy payments are authorized. DSHS may authorize additional child care when:

(1) Needed to accommodate a family's work schedule;

(2) ((Employer)) Verification of work schedule is presented; and

(3) More than ten hours of care is needed per day ((for the consumer to participate in an approved activity)) (up to a maximum of sixteen hours a day) and the provider's written policy is to charge all families for these ((extra)) hours of care in excess of ten hours per day.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3840 New eligibility period. (1) If a consumer wants to receive SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for SCC program subsidies for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-3670 and 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called income phase-out. In determining eligibility for the income phase-out period, the following rules apply:

(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;

(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(c) There is no break between the twelve-month eligibility period and the income phase-out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month income phase-out period; and

(g) The consumer will not be eligible for a second, back-to-back income phase-out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month income phase-out period.

(4) If DSHS determines that a consumer is eligible for SCC program subsidies based on the consumer's reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

((4))) (5) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies. (1) A consumer's continued eligibility for SCC ((program subsidies)) benefits stops when the consumer:

(a) ((The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate, including special needs payment, but not including registration, field trip, and nonstandard hours bonus payments, for all of the consumer's children in care; or

(b) The consumer;

((i))) Does not complete the requested application or reapplication before the deadline provided in WAC 170-290-3665 and 170-290-3840;

(b) At application and reapplication, is not participating in an approved activity as defined in WAC 170-290-3555;

((iii))) (c) Does not meet other SCC eligibility requirements related to family size, income and ((approved activities)) resources as provided in WAC 170-290-3558;

((iii))) (d) Does not return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012;

(e) Does not comply with the copayment requirements of WAC 170-290-3565 ((6) and (7)); or

((iv))) (f) Refuses to cooperate with the child care subsidy audit process or the DSHS office of fraud and accountability (OFA).

(2) A consumer might be eligible for SCC program subsidies again beginning on the date that the consumer:

(a) Meets all SCC program eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-3565((6)); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

WSR 16-14-105

PROPOSED RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed July 5, 2016, 5:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-003.

Title of Rule and Other Identifying Information: Retiree return to work (RRTW) rules: WAC 415-106-700 (PSERS), 415-108-710 (PERS), 415-110-710 (SERS), 415-112-525 (TRS), 415-113-300 (new dual member RRTW rule), and 415-02-030 (definitions).

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard S.E., Conference Room 115, Tumwater, WA 98502, on Wednesday, August 10, 2016, at 10:30 a.m.

Date of Intended Adoption: August 10, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by August 9, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by August 5, 2016, TTY (866) 377-8895 or (360) 753-3166.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments will update retiree return to work rules, providing better clarification and bringing them into alignment with current statutes.

Statutory Authority for Adoption: RCW 41.50.050(5).

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Implementation: Seth Miller, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

July 5, 2016
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-08-008, filed 3/24/16, effective 4/24/16)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.-802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.-010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily

defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.-010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **HERPs mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).**

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

((19))) (20) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

((20))) (21) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

((21))) (22) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Fire-fighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

((22)) (23) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

((23)) (24) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

((24)) (25) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

((25)) (26) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

((26)) (27) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.-180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(28) **Participant** means an eligible employee who participates in a deferred compensation plan.

((27)) (29) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

((28)) (30) **Pension plan** is a plan that provides a life-long post retirement payment of benefits to employees.

((29)) (31) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

((30)) (32) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

((31)) (33) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

((32)) (34) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

((33)) (35) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

((34)) (36) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

((35)) (37) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

((36)) (38) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

((37)) (39) **Public record** is defined in RCW 42.17.020 (41).

((38)) (40) **Restoration** is the process of restoring a member's service credit for prior periods.

((39)) (41) **Retirement system employer** - See "employer."

((40)) (42) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

((41)) (43) **Separation date** is the date a member ends employment in a position eligible for retirement ((or disability benefit coverage)).

((42)) (44) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

((43)) (45) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

((44)) (46) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

((45)) (47) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

((46)) (48) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a ((beneficiary)) designee after the death of a member or retiree.

((47)) (49) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

((48)) (50) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

((49)) (51) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-700 ((As a PSERS retiree, how will my retirement allowance be affected if I return to employment?)) What are the return to work rules for PSERS?

(1) **How soon can I return to work after I retire without impacting my PSERS retirement benefit?** You may ((work as many hours as you choose and continue to receive)) begin working immediately after you retire without impacting your PSERS retirement ((allowance)) benefit if:

(a) You ((return)) go to work ((as an employee)) for a private employer;

(b) You ((return to work as a bona fide)) are an independent contractor as defined in WAC 415-02-110;

(c) Your only employment is as an elected official ((of a city or town)) and you are not a PERS member; or

(d) You work in an ineligible position((; or

(e) You are a retiree returning as an active member of a higher education retirement plan)).

(2) If you return to work in a **PERS, SERS, or TRS Plan 2 or Plan 3, or LEOFF Plan 2** eligible position, your retirement ((allowance)) benefit will be affected as follows:

(a) If you retire and then return to work ((within)) sooner than thirty consecutive calendar days from your accrual date (effective retirement date)((:

(())) your monthly retirement ((allowance)) benefit will be reduced ((by five and one half percent for every eight hours you work during that month. This reduction will be

applied each month)) in accordance with RCW 41.37.050(1) until you remain absent ((from such employment for thirty)) for at least thirty consecutive calendar days.

((ii)) The reduction provided in (a)(i) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred percent will be applied to the allowance you are eligible to receive in subsequent months. See RCW 41.37.050(1).)

(b) If you ((return to work after)) retire and remain absent at least thirty consecutive calendar days ((have elapsed)) from your accrual date, you may work ((for)) up to eight hundred sixty-seven hours each calendar year before your retirement ((allowance)) benefit is suspended.

(3) If you return to work in an eligible PSERS position, your retirement ((allowance)) benefit will be affected as follows:

(a) If you ((return to an eligible PSERS position and)) elect to reenter membership, your retirement ((allowance)) benefit will be suspended. ((If you make this election)) When you reretire, your retirement ((allowance)) benefit will be recalculated pursuant to WAC 415-106-710 ((when you rere-tire)).

(b) If you return to an eligible PSERS position within thirty consecutive days of your accrual date (effective retirement date) and do not reenter membership, your monthly retirement ((allowance)) benefit will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent ((from such employment)) for thirty consecutive calendar days. The reduction will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred percent will be applied to the ((allowance)) benefit you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(c) If you return to an eligible PSERS position after being absent for thirty consecutive calendar days ((or)) from your accrual date (effective retirement date) and do not reenter membership, your retirement ((allowance)) benefit will be suspended until you separate from PSERS employment.

(4) If you return to work after retirement from PSERS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.

(5) What hours are counted toward the limit(s)?

(a) ((Hours that count)) Counted toward the eight hundred sixty-seven hour limit((s are: (i))): All compensated hours that ((you work)) are worked in an eligible position ((for any employer whose)) covered by a DRS or higher education retirement plan ((is administered by the department;

((ii)) Used)), including the use of earned sick leave ((and)), vacation days((;

((iii)) Paid holidays; and

((iv)) Compensatory time, whether you use the time or cash it out), paid holidays, compensatory time, and cashouts of compensatory time.

(b) Not counted toward the hour limit((s)): Cashouts of unused sick and vacation leave ((you cash out)).

((5))) (6) What happens if I work ((over)) more than the annual eight hundred sixty-seven hour limit? ((The department will:

((a)) Suspend your retirement allowance on the day following the day))

((a)) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the hour limit((, and prorate your payment for that month)).

((b)) ((Restart)) Your retirement ((allowance)) benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment identified in subsection (2) of this section, whichever occurs first.

((c)) DRS will recover any overpayments made to you for the month(s) in which you exceeded the ((hour)) work limit and received a retirement ((allowance)) benefit. See RCW 41.50.130.

(7) Terms used.

(a) Accrual date - RCW 41.37.240.

(b) PSERS: Public safety employees' retirement system.

(c) Eligible position - RCW 41.37.010(10); WAC 415-106-100.

(d) Ineligible position - RCW 41.37.010(17).

(e) Membership - RCW 41.37.020.

(f) Month - Calendar month as defined in WAC 415-02-030.

AMENDATORY SECTION (Amending WSR 04-04-037, filed 1/29/04, effective 3/1/04)

WAC 415-108-710 What are the ((PERS retiree)) return to work rules for PERS Plan 1, Plan 2, and Plan 3?

(1) How soon can I return to work after I retire without impacting my PERS retirement benefit?

((There is no required waiting period to return to work)) You may begin working immediately after you retire without impacting your PERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are ((a bona fide)) an independent contractor as defined in WAC 415-02-110;

(iii) Your only employment is as an elected official ((or a city or town)) and you end your PERS membership under RCW 41.40.023 (3)(b); or

(iv) You are a PERS Plan 1 retiree elected to office or appointed to office by the governor.

(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement ((allowance)) benefit will be reduced in accordance with RCW 41.40.037(1) until you ((separate)) remain absent for at least thirty consecutive calendar days.

(c) If you ((wait)) retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible((, or ineligible((, temporary, etc.))), for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your PERS retirement benefit until you reach your applicable hour limit.

(2) What is the annual hour limit? ((After you meet the thirty day waiting period)) Except as provided in subsection (5) of this section regarding the 2008 early retirement factors

(ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, ((there are different)) your annual hour limit((s that apply to you)) will be based on ((what kind of)) the position you return to((; the system from which you retired, and when you retired)).

(a) **No limit.** You may work as many hours as you want without affecting your retirement ((allowance)) benefit if you work:

((i) In ((an ineligible)) a position((;

((ii) As a retiree returning as an active member of a)) that is not eligible for membership in a DRS or higher education retirement plan;

((iii) As a bona fide)) (ii) As an independent contractor;

((iv))) (iii) For a private employer;

((v))) (iv) If you end your PERS membership as an elected official ((of a city or town)) under RCW 41.40.023 (3)(b); or

((vi))) (v) As a PERS Plan 1 retiree elected to office or appointed to office by the governor.

(b) **((Fifteen hundred hour limit.)** You may work up to fifteen hundred hours in an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4), in a calendar year subject to the nineteen hundred hour cumulative limit described in subsection (3) of this section before your retirement allowance is suspended if:

((i) You are a PERS Plan 1 retiree who retired prior to August 1, 2003; or

((ii) You are a PERS Plan 1 retiree who retired on or after August 1, 2003, you waited at least ninety consecutive calendar days from your accrual date, and you met the additional conditions described in RCW 41.40.037 (2)(b).

((e))) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours in ((an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4), in)) a calendar year, in a position that is eligible for membership in a DRS or a public institution of higher education retirement plan, before your retirement allowance is suspended ((if:

((i) You are a PERS Plan 1 retiree who retired on or after August 1, 2003, and you do not meet the additional conditions described in RCW 41.40.037 (2)(b) or you have exceeded the nineteen hundred hour cumulative limit described in subsection (3) of this section; or

((ii) You are a PERS Plan 2 or 3 retiree and return to work in an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4).

((d) If you are retired from PERS and another DRS retirement system, refer to the table below to determine the effect of returning to work:

Dual System Combination	Return to Work System	Outcome
PERS Plan 1 and LEOFF Plan 2	PERS	Your LEOFF Plan 2 benefit would be suspended and you could work up to the PERS Plan 1 limit (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	TRS	Your LEOFF Plan 2 benefit would be suspended and you could work up to the PERS Plan 1 limit (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF Plan 2	Your LEOFF Plan 2 benefit would be suspended and you would be mandated back into LEOFF Plan 2 membership. Your PERS benefit would be suspended until you terminate from LEOFF Plan 2.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and LEOFF Plan 2 benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member of WSPRS. Your LEOFF Plan 2 benefit is suspended and you can work up to the PERS Plan 1 limit (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.

Dual System Combination	Return to Work System	Outcome
PERS Plan 1 and TRS Plan 1	PERS	If the position is at any educational institution in Washington state, then the TRS Plan 1 limits apply which allow you to work up to fifteen hundred hours during the fiscal year before your PERS and TRS benefits would be suspended. The one exception is if you return to work at a higher education employer and choose to join another retirement system (e.g., TIAA-CREF). In that case, the PERS Plan 1 rules would apply. By definition, the position is ineligible in PERS and therefore you can work unlimited hours without your PERS and TRS benefits being suspended. If the position is not at an educational institution in Washington state, the TRS Plan 1 limits would apply and you can work unlimited hours without your PERS and TRS benefits being suspended.
	TRS	The TRS Plan 1 limits would apply and you can work up to fifteen hundred hours during the fiscal year before your PERS and TRS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF Plan 2 and your PERS and TRS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. The TRS Plan 1 limits would apply and you can work unlimited hours without your PERS and TRS benefits being suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in WSPRS and your PERS and TRS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS. The TRS Plan 1 limits would apply and you can work unlimited hours without your PERS and TRS benefits being suspended.
PERS Plan 1 and TRS Plan 2 or 3	PERS	You can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	TRS	You can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in LEOFF Plan 2 and your PERS and TRS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in WSPRS and both your PERS and TRS benefits would be suspended.

Dual System Combination	Return to Work System	Outcome
		If you have fifteen or more years of service credit in either system then you may not become a member WSPRS and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
PERS Plan 1 and WSPRS	PERS	Your WSPRS benefit would not be suspended and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	TRS	Your WSPRS benefit would not be suspended and you can work up to the PERS 1 Plan limits (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF. Your WSPRS benefit would not be suspended and your PERS benefit would be immediately be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. Your WSPRS benefit would not be suspended and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (e) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	WSPRS	Your WSPRS benefit would be suspended and you would be mandated back into membership. Your PERS benefit would be suspended until you terminate from WSPRS.
PERS Plan 2 or 3 and LEOFF Plan 2	SERS	Your LEOFF Plan 2 benefit would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	PERS	Your LEOFF Plan 2 benefit would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	TRS	Your LEOFF Plan 2 benefit would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF	Your LEOFF Plan 2 benefit would be suspended and you are mandated back into LEOFF Plan 2 membership. Your PERS benefit would be suspended until you terminate from LEOFF Plan 2.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and LEOFF Plan 2 benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS. Your LEOFF Plan 2 benefit is suspended and you can work up to eight hundred sixty-seven hours during the calendar year before your PERS benefit would be suspended.

Dual System Combination	Return to Work System	Outcome
PERS Plan 2 or 3 and SERS Plan 2 or 3	SERS	You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	PERS	You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	TRS	You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and PERS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS benefits would be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
PERS Plan 2 or 3 and TRS Plan +	SERS	You can work up to fifteen hundred hours during the fiscal year in an eligible position before your PERS and TRS benefits would be suspended.
	PERS	If the position is at any educational institution in Washington state you can work up to fifteen hundred hours during the fiscal year before your PERS and TRS benefits would be suspended. If the position is not at an educational institution in Washington state, you can work unlimited hours without your PERS and TRS benefits being suspended.
	TRS	You can work up to fifteen hundred hours during the fiscal year in an eligible position before your PERS and TRS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your PERS and TRS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work unlimited hours without your PERS and TRS benefits being suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and TRS benefits would be suspended.

Dual System Combination	Return to Work System	Outcome
		If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work unlimited hours without your PERS and TRS benefits being suspended.
PERS Plan 2 or 3 and TRS Plan 2 or 3	SERS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	PERS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	TRS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your PERS and TRS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and TRS benefits would be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
PERS Plan 2 or 3 and WSPRS	SERS	Your WSPRS benefit would not be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	PERS	Your WSPRS benefit would not be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
PERS Plan 2 or 3 and WSPRS	TRS	Your WSPRS benefit would not be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF. Your PERS benefit is suspended but your WSPRS benefit would not be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your PERS benefit would be suspended. Your WSPRS benefit would not be suspended.
	WSPRS	Your WSPRS benefit would be suspended and you are mandated back into membership.

Dual System Combination	Return to Work System	Outcome
		Your PERS benefit would be suspended until you terminate from WSPRS.

(3) What is the nineteen hundred hour cumulative hour limit?

(a) This limit is applicable only to PERS Plan 1 retirees. It puts a lifetime limit on the number of hours that can be worked in an eligible position while still receiving a retirement allowance. This limit applies to all retirements in PERS Plan 1. Any hours reported by your employer as worked over eight hundred sixty seven up to fifteen hundred in a calendar year while receiving a retirement allowance are counted toward the cumulative limit. Hours accumulated toward your lifetime post retirement employment limit from a previous retirement will continue to be counted in your new retirement.

(b) DRS will send out statements annually to any PERS Plan 1 retiree who accumulated any hours toward the nineteen hundred hour cumulative limit in the preceding calendar year. The statement will show the hours you have worked in the calendar year and the total hours you have worked since your retirement date. If there has been no activity in the calendar year, DRS will not issue a statement, even if there is an accumulated total from previous calendar years. See also WAC 415-02-130).

((4)) (3) What hours ((are counted)) count toward the limit((s))?

(a) Counted toward the eight hundred sixty-seven-hour limit((s)): All compensated hours that are worked ((for any DRS-covered employer)) in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) Not counted toward the hour limit((s)): Cashouts of unused sick and vacation leave.

((5)) (4) What happens if I work ((ever)) more than the annual ((or cumulative)) eight hundred sixty-seven-hour limit?

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement ((allowance)) benefit for the month in which you exceed the ((applicable)) hour limit. ((The suspension of your retirement allowance will be effective the day after the day in which you exceeded the applicable hour limit.))

(b) If your retirement allowance is suspended for exceeding the nineteen hundred hour cumulative work limit, all subsequent calendar years will be subject to the eight hundred sixty-seven hour annual limit.

((e))) (b) Your retirement ((allowance)) benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible ((DRS-covered)) employment, whichever occurs first.

((f))) (c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the work limit and received a retirement ((allowance)) benefit. See RCW 41.50.130.

(5) What if I am a PERS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(6) Can I return to PERS membership?

(a) If you ((are a PERS retiree)) retire from PERS, you have the option to return to membership if you are employed by a PERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.40.023(12).

(b) If you reenter PERS membership and later choose to retire again, DRS will recalculate your retirement ((allowance)) benefit under the applicable statutes and regulations. See WAC 415-108-830. You will be subject to the return to work rules in place at the time of your reretirement. ((If you are a PERS Plan 1 member you will also be entitled to a new nineteen hundred hour cumulative hour limit. You will be subject to the return to work rules, including the nineteen hundred hour lifetime limit described in subsection (3) of this section, in place at the time of your retirement.))

(c) If you are a retiree from another retirement system ((that)) administered by DRS ((administers)), you may choose to enter PERS membership if you are eligible. See WAC 415-108-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.40.270 and 41.40.023.

(7) What if I retired from PERS and another DRS retirement system?

(a) If you retired from PERS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your PERS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from PERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) Terms used.

- (a) 2008 Early retirement factors (ERFs) - RCW 41.40.-630 (3)(b) for PERS Plan 2 or RCW 41.40.820 (3)(b) for PERS Plan 3.
- (b) Accrual date - RCW 41.40.193, 41.40.680, 41.40.-801.
- ((b)) (b) Acronyms used:
 - (i) LEOFF: Law enforcement officers' and firefighters' retirement system.
 - ((ii)) (c) PERS: Public employees' retirement system.
 - ((iii)) (d) SERS: School employees' retirement system.
 - ((iv)) (e) TRS: Teachers' retirement system.
 - ((v)) (f) WSPRS: Washington state patrol retirement system.
 - ((e)) (g) Calendar day - WAC 415-02-030.)
 - (d) Elected official - WAC 415-108-550.
 - (e) Eligible position - RCW 41.40.010(((25))); WAC 415-108-680 through 415-108-700.
 - ((e)) (f) Ineligible position - RCW 41.40.010(((26))).
 - ((f)) (g) Law enforcement officer - RCW 41.26.030(3)).
 - (g) Month - Calendar month as defined in WAC 415-02-030.
 - (h) Public institution of higher education - RCW 28B.10.400.
 - (i) Membership - RCW 41.40.023.

AMENDATORY SECTION (Amending WSR 04-04-037, filed 1/29/04, effective 3/1/04)

WAC 415-110-710 What are the ((SERS retiree)) return to work rules for SERS Plan 2 and Plan 3? (1) How soon can I return to work after I retire without impacting my SERS retirement benefit?

(a) ((There is no required waiting period to return to work if)) You may begin working immediately after you retire without impacting your SERS retirement benefit if:

- (i) You go to work for a private employer;
- (ii) You are ((a bona fide)) an independent contractor as defined in WAC 415-02-110; or
- (iii) Your only employment is as an elected official ((of a city or town)) and you end your SERS membership under RCW 41.35.030 (2)(b).

(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement ((allowance)) benefit will be reduced in accordance with RCW

41.35.060(1) until you ((separate)) remain absent for at least thirty consecutive calendar days.

(c) If you ((wait)) retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible((,))) or ineligible((, temporary, etc.))) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your SERS retirement benefit until you reach your applicable hour limit.

Example: Amy's last day at work for the ABC school district is June 19, 2015, and her official retirement date is September 1, 2015, (when she starts getting her monthly benefit). She wants to return to work at the start of the new school year on September 8, 2015. She needs to wait thirty consecutive calendar days from her September 1st retirement date before returning to work. If she returns to work before October 1st, her benefit will be reduced until she meets the required thirty-day break from employment.

(2) **What is the annual hour limit?** ((After you meet the thirty-day waiting period)) Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, ((there are different annual hour limits that apply to you based on what kind of)) your annual hour limit will be based on the position you return to.

(a) **No limit.** You ((can)) may work as many hours as you want without affecting your retirement ((allowance)) benefit if you work:

- (i) In ((an ineligible position);
- (ii) As a retiree returning as an active member of a) a position that is not eligible for membership in a DRS or higher education retirement plan;
- ((iii)) (ii) As ((a bona fide)) an independent contractor;
- ((iv)) (iii) For a private employer; or
- ((v)) (iv) If you end your SERS membership as an elected official ((of a city or town)) under RCW 41.35.030 (2)(b).

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours ((in an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4),)) in a calendar year in a position which is eligible for membership in a DRS or public institution of higher education retirement plan, before your retirement ((allowance)) benefit is suspended.

((e)) If you are retired from SERS and another DRS retirement system, refer to the table below to determine the effect of returning to work:

Dual System Combination	Return to Work System	Outcome
SERS Plan 2 or 3 and LEOFF Plan 2	SERS	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.

Dual System Combination	Return to Work System	Outcome
	PERS	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	TRS	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	LEOFF Plan 2	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you would be mandated back into LEOFF Plan 2 membership. Your SERS monthly retirement allowance would be suspended until you terminate from LEOFF Plan 2.
	WSPRS	If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in WSPRS and your SERS and LEOFF Plan 2 monthly retirement allowances are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS. Your LEOFF Plan 2 monthly retirement allowance is suspended and you can work up to eight hundred sixty-seven hours during the calendar year before your SERS monthly retirement allowance would be suspended.
SERS Plan 2 or 3 and PERS Plan 2 or 3	SERS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.
	PERS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.
	TRS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and PERS monthly retirement allowances are suspended.

Dual System Combination	Return to Work System	Outcome
		If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS monthly retirement allowances would be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowance would be suspended.
SERS Plan 2 or 3 and TRS Plan 1	SERS	You can work up to fifteen hundred hours during the fiscal year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.
	PERS	If the position is at any educational institution in Washington state you can work up to fifteen hundred hours during the fiscal year before your SERS and TRS monthly retirement allowances would be suspended. If the position is not at an educational institution in Washington state, you can work unlimited hours without your SERS or TRS monthly retirement allowance being suspended.
	TRS	You can work up to fifteen hundred hours during the fiscal year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and TRS monthly retirement allowances are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work unlimited hours without your SERS and TRS monthly retirement allowances being suspended.

Dual System Combination	Return to Work System	Outcome
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS monthly retirement allowances would be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before their SERS and PERS monthly retirement allowance would be suspended.
SERS Plan 2 or 3 and TRS Plan 2 or 3	SERS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.
	PERS	You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.
	TRS	The retiree can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before their SERS and TRS monthly retirement allowances would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and TRS monthly retirement allowances are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS monthly retirement allowances would be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.

Dual System Combination	Return to Work System	Outcome
SERS Plan 2 or 3 and WSPRS	SERS	Your WSPRS monthly retirement allowance would not be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	PERS	Your WSPRS monthly retirement allowance would not be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	TRS	Your WSPRS monthly retirement allowance would not be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF. Your SERS monthly retirement allowance is suspended but your WSPRS monthly retirement allowance would not be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	WSPRS	Your WSPRS monthly retirement allowance would be suspended and you are mandated back into membership. Your SERS monthly retirement allowance would be suspended until you terminate from WSPRS.))

(3) What hours ((are counted)) count toward the limit((s))?

(a) Counted toward the eight hundred sixty-seven hour limit((s)): All compensated hours that are worked ((for any DRS covered employer)) in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) Not counted toward the hour limit((s)): Cashouts of unused sick and vacation leave.

(4) What happens if I work ((ever)) more than the annual eight hundred sixty-seven hour limit?

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement ((allowance)) benefit for the month in which

you exceed the limit. ((The suspension will be effective the day after the day in which you exceeded the hour limit.))

(b) Your retirement ((allowance)) benefit will be restarted beginning ((with)) the next calendar year (January) or the day after you terminate all eligible ((DRS covered)) employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement ((allowance)) benefit. See RCW 41.50.-130.

(5) What if I retired using the 2008 early retirement factors (ERFs)?

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by

a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) If you retire using the 2008 ERFs and then return to work at or after age sixty-five, you can work under the rules described in subsections (2) and (3) of this section.

(6) Can I return to SERS membership?

(a) ((If you are a SERS retiree,)) If you retire from SERS, you have the option to return to membership if you are employed by a SERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.35.030(3).

(b) If you reenter SERS membership and later choose to retire again, DRS will recalculate your retirement ((allow-
anee)) benefit under the applicable statutes and regulations. See WAC 415-110-830. You will be subject to the return to work rules in place at the time of your reretirement.

(c) If you are a retiree from another retirement system ((that)) administered by DRS ((administers)), you may choose to enter SERS membership if you are eligible. See WAC 415-110-725. The option to ((return to)) enter membership is prospective from the first day of the month following the month in which you request ((to return to)) membership. See RCW 41.04.270 and 41.35.030.

((6))) (7) What if I retired from SERS and another DRS retirement system?

(a) If you retired from SERS using the 2008 ERFs and another DRS retirement system and are under age sixty-five:

(i) Your SERS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from SERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) Terms used.

(a) 2008 Early retirement factors (ERFs) - RCW 41.35-420 (3)(b) for SERS Plan 2, or RCW 41.35.680 for SERS Plan 3.

(b) Accrual date - RCW 41.35.450, 41.35.640.

((b)) Acronyms used:

(i) LEOFF: Law enforcement officers' and firefighters' retirement system.

(ii) PERS: Public employees' retirement system.

(iii) SERS: School employees' retirement system.

(iv) TRS: Teachers' retirement system.

((v) WSPRS: Washington state patrol retirement sys-tem.))

(c) ((Calendar day - WAC 415-02-030.)) Elected official - WAC 415-110-550.

(d) Eligible position - RCW ((41.35.060(2))) 41.35.010; WAC 415-110-680 through 415-110-700.

(e) Ineligible position - RCW 41.35.010(((23))).

(f) ((Law enforcement officer - RCW 41.26.030(3).)

((g))) Member - RCW 41.35.010(((55))).

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Public institution of higher education - RCW 28B.10.400.

(i) SERS - School employees' retirement system.

AMENDATORY SECTION (Amending WSR 02-02-060, filed 12/28/01, effective 1/1/02)

WAC 415-112-525 ((How soon can I return to work as a retiree?)) What are the return to work rules for TRS Plan 1, Plan 2, and Plan 3? ((+)) If you return to work sooner than one full calendar month after your accrual date, your retirement allowance will be reduced by 5.5% for every seven hours worked during the month until you separate from all employment for one full calendar month. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32-862 (TRS Plan 3).

Example 1:

Dave's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. If Dave wants to return to work after he retires, he will need to wait until at least November 1st to avoid receiving the daily percentage reduction in his retirement allowance.

Example 2:

Brian's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. Brian subsequently is asked to work for five seven-hour work days between October 10th and October 17th. On November 1st, Brian's retirement allowance will be reduced by five and one-half percent for every seven hours worked during October. (RCW 41.32.570.) On December 1st, he will qualify for his full retirement benefit. Brian will also qualify to return to work under the work limits described in WAC 415-112-540(2).

Example 3:

Joe's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. Joe then returns to work on October 10th and continues working. Joe's retirement benefit will be reduced by 5.5% for each seven hours he works. Joe's benefit reduction will accrue up to one hundred forty hours per month. If he stops working, his full retirement benefit will resume after he remains separated for one full calendar month. Any benefit reduction over one hundred percent will be applied to Joe's allowance in subsequent months.

(2) If you have a written agreement to return to work before your accrual date, and in fact return to work, you have not entered retirement status. See WAC 415-112-515. In this case, you are not a retiree, and the 5.5% reduction in subsection (1) of this section does not apply.

Example 4:

Teri's last day of work is September 15th. Her accrual date would ordinarily be on October 1st. However, on September 18th, Teri signed an agreement to work for one day in October. Teri signed the agreement prior to her accrual date. Under WAC 415-112-515 she is not a retiree, and not eligible for her retirement benefits. In addition, the 5.5% reduction does not apply. Teri's accrual date will now be November 1st, as long as she did not have any other agreements to work.

Defined terms used. Definitions for the following terms used in this section may be found in the sections listed:

(a) "Accrual date" — WAC 415-112-520; RCW 41.32-795, 41.32.855.

(b) "Eligible position" — RCW 41.40.010, 41.32.010 (37)(a), 41.35.010(22).

(c) "Employer" — RCW 41.32.010(11).)

(1) How soon can I return to work after I retire without impacting my TRS retirement benefit?

(a) You may begin working immediately after you retire without impacting your TRS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263.

(b) If you retire and then return to work for a public employer except as provided in (a) of this subsection, sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your retirement allowance will be reduced until you remain absent for at least thirty consecutive calendar days. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible or ineligible) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your TRS retirement benefit until you reach your applicable hour limit.

(d) Examples:

(i) Return to work with no reduction

Casey's last day of work is January 20th. Her accrual date (effective retirement date) is February 1st, and there are 28 days in February. If Casey wants to return to work for a public employer after she retires, she will need to wait until at least March 3rd to avoid the daily percentage reduction in her retirement allowance.

(ii) Return to work before thirty day waiting period ends

Brian's last day of work is September 1st. His accrual date (effective retirement date) is October 1st. Brian returns to work October 10 through October 17th. In November, Brian's retirement allowance will be reduced by 5.5% for

every seven hours worked during October. Brian's new thirty day wait period would be October 18th through November 16th.

(2) What is the annual hour limit? Except as provided in subsection (5) of this section regarding the 2008 early retirement factors, after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) No limit. You may work as many hours as you want without affecting your retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, and:

(A) Your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263; or

(B) You go to work for a nonpublic educational institution.

(iv) You are a TRS Plan 2 or Plan 3 member working as an on-call substitute teacher.

(b) Eight hundred sixty-seven-hour limit. You may work up to eight hundred sixty-seven hours in a year (July through June for TRS Plan 1, January through December for TRS Plan 2) before your retirement benefit is suspended.

(3) What hours count toward the limit?

(a) Counted toward the eight hundred sixty-seven-hour limit: All compensated hours that are worked in an eligible position, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) Not counted toward the hour limit: Cashouts of unused sick and vacation leave.

(4) What happens if I work more than the annual eight hundred sixty-seven-hour limit?

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next year (July for TRS Plan 1, January for TRS Plan 2 or Plan 3) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

(5) What if I am a TRS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those

in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) If you retire using the 2008 ERFs, upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

(6) Can I return to TRS membership?

(a) You may choose to return to membership if you are employed by a public educational institution and are otherwise eligible. Membership will be prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.32.044.

(b) If you reenter TRS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. You will be subject to the return to work rules in place at the time of your retirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter TRS membership if you are eligible. See WAC 415-112-546. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.

(7) What if I retired from TRS and another DRS retirement system?

(a) If you retired from TRS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your TRS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from TRS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) Terms used.

(a) "Accrual date" - WAC 415-112-520; RCW 41.32-795, 41.32.855.

(b) "Eligible position" - RCW 41.32.010.

(c) "Employer" - RCW 41.32.010.

(d) "Year."

(i) For TRS Plan 1, a "year" is July 1st through June 30th.

(ii) For TRS Plan 2 and Plan 3, a "year" is January 1st through December 31st.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 415-112-541 How will returning to work affect my TRS Plan 1 monthly pension?

WAC 415-112-542 How will returning to work affect my TRS Plan 2 or Plan 3 monthly retirement allowance?

EMPLOYMENT AFTER RETIREMENT

NEW SECTION

WAC 415-113-300 How is my benefit affected if I return to work after retiring from multiple DRS retirement systems? (1) If you retired using the 2008 early retirement factors (ERFs) and return to work for a DRS employer before age sixty-five, your retirement benefit(s) based on the 2008 ERFs will be immediately suspended. Any benefit(s) not based on the 2008 ERFs will be subject to rules for that system.

(2) If you are retired from multiple DRS systems and return to work for a DRS employer, your benefits will be affected according to rules of each respective system with the following exception:

If one of the systems you retired from is TRS Plan 1, your annual hourly limit for all your systems will be counted using a fiscal year (July through June).

See WAC 415-108-710 (PERS), 415-110-710 (SERS), 415-112-541 (TRS Plan 1), 415-112-541 (TRS Plan 2 and Plan 3), 415-106-700 (PSERS), RCW 41.26.500 (LEOFF Plan 2), 43.43.130 (WSPRS).

(3) Term used.

Employer - See WAC 415-02-030.

WSR 16-14-107

PROPOSED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed July 6, 2016, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-106.

Title of Rule and Other Identifying Information: WAC 392-121-108 Definition—Enrollment exclusions.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Policy Conference Room, Olympia, WA 98501, on August 9, 2016, at 9:00 a.m.

Date of Intended Adoption: August 11, 2016.

Submit Written Comments to: Becky McLean, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by August 9, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by August 2, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This WAC requires updating to address the changes required with the passage of HB [4SHB] 1541 which requires districts to provide educational services for students who have been long-term suspended or expelled. The current WAC prohibits dis-

tricts and charter schools from claiming state funding for a student who has been expelled or long-term suspended when the conditions of the suspension will cause the student to lose academic grades or credit. With the proposed changes to this WAC, a student who has been expelled or long-term suspended could be claimed for state funding.

Statutory Authority for Adoption: RCW 28A.150.290.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation and Enforcement: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

July 6, 2016
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-108 Definition—Enrollment exclusions. A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - Except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days, or a part-time student that has not attended school at least once within a time period consisting of twenty consecutive school days, shall not be counted as an enrolled student until attendance is resumed. School days are defined as the regularly scheduled instructional days for the general population of the school or district the student is enrolled in, regardless of the student's individualized schedule.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172A-02100 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - A student for whom the school district or charter school has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - A student who has transferred to another public or private school and for whom the school district or charter school has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district or charter school.

(4) ((Suspensions - A student who has been suspended from school pursuant to WAC 392-400-260 or in accordance with a charter school's student discipline policy, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - A student who has been expelled from all school subjects or classes by the school district pursuant to WAC 392-400-275 or 392-400-295 or in accordance with a charter school's student discipline policy shall not be counted as an enrolled student until such time as enrollment in a district program has resumed; a student who has been partially expelled, such as from a single school subject or class, by the school district or charter school pursuant to WAC 392-400-275 or 392-400-295 or in accordance with a charter school's student discipline policy may be considered a part-time enrolled student.

((6))) Graduates - A student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

((7)) (5) Tuition - A student paying tuition including, but not limited to, students on an F-1 visa or students enrolled in a tuition-based summer school program.

((8)) (6) An institution student who is claimed as a 1.0 FTE by any institution as an enrolled student eligible for state institutional education support pursuant to chapter 392-122 WAC where the institution's count date occurs prior to the school district count date for the month. Where the count dates occur on the same date, the institution shall have priority for counting the student.

WSR 16-14-111 PROPOSED RULES GAMBLING COMMISSION

[Filed July 6, 2016, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-031.

Title of Rule and Other Identifying Information: Amending WAC 230-15-080 Authorized fees and authorized methods of collection and 230-15-135 Wagering limits for non-house-banked card games.

Hearing Location(s): The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on September 8 or 9, 2016, at 11:30 a.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: September 8 or 9, 2016.

Submit Written Comments to: Michelle Rancour, P.O. Box 42400, Olympia, WA 98504-2400, e-mail michelle.

rancour@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by September 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Petitioner Teresa Malphrus is requesting the following rule changes:

- Increase the maximum amount of a single wager on any authorized poker game, not just Texas Hold 'Em, from \$40 to \$100 at Class F and house-banked cardrooms; and
- Allow Class F and house-banked cardrooms to assess players of nonhouse-banked card games a rake fee of up to ten percent of the pot with no limit. Currently, the rake cannot be more than \$5 per hand or ten percent of the total wagers for a hand, whichever is less.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tina Griffin, Assistant Director, Lacey, (360) 486-3546; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Josh Stueckle, Acting Agent-in-Charge, Spokane, (509) 325-7909.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule changes would not impose additional costs. The changes would allow higher wagering limits and higher fees (revenue) for businesses, both of which would be a benefit.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 6, 2016

Michelle Rancour
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-080 Authorized fees and authorized methods of collection. Card game licensees must collect only one type of card game fee at a table at any given time. The following are authorized types of fees, the card game licensees who may use those fee types, and the methods of collection:

Authorized types of fees	Licensees authorized to use the fee types	Authorized methods of collection	Maximum amount to collect
(1) Period of time - (a) Licensees must collect the fee at least once per hour at times the licensee chooses, for example, at thirty minute increments; and (b) Licensees must record all fees immediately after collection; or	Class A, B, C, E, F	Direct collection; or Chip rack - Only allowed if licensed for three or fewer tables; or Drop box.	Not more than ten dollars per hour, per player.
(2) Per hand played - (a) Players must place fees charged on a per-hand basis in a designated area of the table and dealers must collect them before dealing the first round of cards; and (b) After collecting the fees, dealers must deposit all chips or coins in either the drop box or chip rack; or	Class F and house-banked	Drop box; or Chip rack - Only allowed if licensed for three or fewer tables.	Not more than one dollar per hand, per player.
(3) Rake -	Class F and house-banked	Drop box; or Chip rack - Only allowed if licensed for three or fewer	Not more than ((five dollars per hand or)) ten percent of the total wagers

Authorized types of fees	Licensees authorized to use the fee types	Authorized methods of collection	Maximum amount to collect
(a) Dealers must collect fees charged on the amounts wagered during the play of the hand and place the fees in a designated area of the table; and		tables.	for a hand((, whichever is less)).
(b) Once dealers accumulate the maximum fee for a hand, they must spread the chips or coins to allow players and the surveillance system to view the amount collected. After spreading the chips or coins, the dealer deposits them in either the drop box or chip rack.			

AMENDATORY SECTION (Amending WSR 12-21-048, filed 10/12/12, effective 1/1/13)

WAC 230-15-135 Wagering limits for nonhouse-banked card games. Card room licensees must not exceed these wagering limits:

(1) **Poker -**

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed ((forty dollars; however, class F and house-banked card game licensees may offer a single wager not to exceed));

(i) One hundred dollars for ((the game of Texas Hold'em;)) class F and house-banked card game licensees; and

(ii) Forty dollars for all other card game licensees.

(2) **Games based on achieving a specific number of points** - Each point must not exceed five cents in value;

(3) **Ante** - No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager((;)).

(4) **Panguingue (Pan)** - The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

WSR 16-14-113

PROPOSED RULES

**DEPARTMENT OF ARCHAEOLOGY
AND HISTORIC PRESERVATION**

[Filed July 6, 2016, 11:30 a.m.]

Continuance of WSR 16-13-132.

Preproposal statement of inquiry was filed as WSR 16-04-032.

Title of Rule and Other Identifying Information: Washington main street program (WSMSP) Washington Administrative Code rules. The proposed rules will guide the state historic preservation officer (SHPO) and director of the department of archaeology and historic preservation (DAHP) in administering the WSMSP. The WSMSP was created by the legislature pursuant to chapter 43.360 RCW to assist local jurisdictions implement economic and physical revitalization through the activities of designated and qualified 501 (c)(3) or 501 (c)(6) organizations.

Hearing Location(s): Legislative Building, Room 112, 416 Sid Snyder Avenue S.W., Olympia, WA 98504, on Wednesday, August 3, 2016, at 10:00 a.m.; and at the Ellensburg City Hall, Council Chambers, 501 North Anderson Street, Ellensburg, WA 98926, on Thursday, August 4, 2016, at 1:00 p.m.

Date of Intended Adoption: September 1, 2016.

Submit Written Comments to: Breanne Durham, Washington State Main Street Program, 1204 Minor Avenue, Seattle, WA 98101, e-mail bdurham@preservewa.org, fax (206) 624-2410, by August 2, 2016.

Assistance for Persons with Disabilities: Contact Beverly Ubias by 5:00 p.m., August 2, 2016, (360) 586-3077.

Purpose of the Proposal and Its Anticipated Effects,
Including Any Changes in Existing Rules: To change public
hearing location.

July 6, 2016
Gregory Griffith
Deputy State Historic
Preservation Officer